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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~1160~~. ~~812 4444~~ 229

THE PHENIX BANK OF THE CITY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

DAVID RISLEY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED MARCH 11, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 1160.

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1 STATE OF NEW YORK:

COURT OF APPEALS, CLERK'S OFFICE,
Albany, January 22, 1881.

The answer of the judges of the court of appeals of the State of New *of New* York, in the within writ named, doth certify under the seal of our said court to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in the following schedules, as in said writ is commanded, viz: Petition, writ of error, assignment of error, citation and proof of service thereof, copy opinion, copy bond, and remittitur.

By the court:

[SEAL.] E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

2 Supreme Court of the United States.

THE PHENIX BANK OF THE CITY OF NEW YORK, plaintiff in error,
against
DAVID RISLEY, DEFENDANT IN ERROR.

To the Supreme Court of the United States:

The petition of the Phenix Bank of the city of New York respectfully shows:

That your petitioner being now a national bank duly created and existing under and by virtue of the act of Congress of the United States entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and known by the name of the Phenix National Bank of the City of New York, in an action or suit in the supreme court of the State of New York, by David Risley as
3 plaintiff against The Phenix Bank of the City of New York as defendant, was sued to recover ten thousand dollars and interest as part of certain moneys which had been theretofore deposited with the said The Phenix Bank of the City of New York by the Bank of Georgetown, of Georgetown, South Carolina.

That as a bar to that action or suit the said defendant therein, your petitioner, did plead the seizure and confiscation of said moneys under certain statutes of the United States, and by an authority exercised under the United States, and did set up in its answer the record and judgment of the district court of the United States for the southern district of New York, which had been duly made, given, and rendered by said district court, which court had jurisdiction in the premises, certain proceedings in rem entitled The United States against Certain Moneys on Deposit in the Phenix Bank of the City of New York,
4 belonging to the Bank of Georgetown, of Georgetown, South Carolina, under and by virtue of which the said moneys after having been duly seized were duly confiscated and forfeited to the United States.

That said action or suit was tried at a circuit court of the said supreme court of the State of New York in the month of January, 1878, before Hon. Charles H. Van Brunt, justice, and a jury, and on that trial the court excluded and would not receive in evidence the said record and

judgment of the said district court, and decided against the validity of the authority aforesaid and against the validity of said record and judgment as a bar and defense to said action, and judgment was thereafter, and on the fourteenth day of February, 1878, entered in said action in favor of said David Risley against the said The Phenix Bank of the City of New York for ($20,583.16) twenty thousand five hundred and eighty-three dollars and sixteen cents.

5 That upon an appeal duly taken by your petitioner to the general term of the supreme court of the State of New York from the said judgment, the said judgment was affirmed, and judgment of affirmance and for one hundred and fifty-two dollars and ninety cents costs was entered on the twentieth day of November, 1879, in favor of said David Risley as plaintiff and respondent against said The Phenix Bank of the City of New York as defendant and appellant, the said general term having also decided against the validity of the said seizure and confiscation and against the said statutes and authority aforesaid and against the said record and judgment.

That thereafter your petitioner duly appealed from the said judgments to the court of appeals of the State of New York, and after argument and consideration that court also decided against the valid-

6 ity of the said seizure and confiscation and against the said statutes and authority aforesaid, and against the validity of the said record and judgment, and rendered final judgment affirming the aforesaid judgments in all things with costs.

That the said court of appeals is the highest court of law or equity of the State of New York in which a decision could be had in the said action or suit, and that in said suit or action was drawn in question the statutes of the United States, one entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, and the other entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved July 17th, 1862; and also the validity of the authority exercised under the United States in the seizure and confiscation aforesaid, and the decision was against the validity of the

7 same in each case.

Wherefore your petitioner prays for a writ of error directed to the court of appeals commanding that court to send the record and proceedings in the said suit or action aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, and for the usual citation and supersedeas, to the end that the record and proceedings, being inspected, the said justices of the Supreme Court of the United States may cause further to be done therein to correct all errors what of right and according to the law and custom of the United States ought to be done.

And your petitioners will ever pray, &c.

Dated Jan'y 19th, 1881.

PHENIX NAT'L BANK OF THE CITY OF NEW YORK,
By JOHN PARKER, *C.*

Petitioner.

Edgar S. Van Winkle, attorney for petitioner, No. 48 Wall street, New York, N. Y.

8 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John Parker, being duly sworn, says that he is the cashier of the

petitioner and that the foregoing petition is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

JOHN PARKER.

Sworn to before me this 19th day of Jan'y, 1881.

E. S. CANDLER,
Notary Public, Kings Co., etf. filed N. Y. Co.

(Indorsed:) Supreme Court. The Phenix Bank of the City of New York, plaintiff in error, against David Risley, defendant in error. Petition. Edgar S. Van Winkle, attorney for plaintiff in error, 48 Wall street, New York.

9 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of the State of New York, and to the said court of appeals of the State of New York possessed of the return and record from the supreme court of the State of New York, in an action in which David Risley is plaintiff, and the Phenix Bank of the City of New York is defendant, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of New York, wherein final judgment upon a return from the supreme court of the State of New York was rendered January 18th, 1881, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between David Risley, plaintiff, and the Phenix Bank of the City of New York, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such
10 their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Phenix Bank of the City of New York, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court, the nineteenth day of January, in the year of our Lord one thousand eight hundred and eighty-one.

Issued January 19, 1881.

[SEAL.] J. M. DEUEL,
Clerk of the Circuit Court of the United States for the Second Judicial Circuit and Southern District of New York.

Allowed by—

CHAS. J. FOLGER,
Ch. Judge Ct of Appeals St. of New York.

(Indorsed:) U. S. Supreme Court. The Phenix Bank of the City of New York, plaintiff in error, against David Risley, defendant in error. Writ of error. Edgar S. Van Winkle, attorney for plaintiff in error, 48 Wall street, New York. Filed January 20, 1881.

11 Supreme Court of the United States.

THE PHENIX BANK OF THE CITY OF NEW YORK, plaintiff in error,
against
DAVID RISLEY, DEFENDANT IN ERROR.

Of October term, in the year of our Lord one thousand eight hundred and eighty-one.

And now, to wit, on this second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said plaintiff in error, by Edgar S. Van Winkle, its attorney, and says, that in the record and proceedings aforesaid and in the giving of judgment aforesaid there is manifest error in this, to wit, that by the said record and proceedings aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given against the said plaintiff in error, and in favor of the said defendant in error, against the exemption and protection claimed by the said plaintiff in error as mentioned in the said record and
12 proceedings aforesaid, under and by virtue of the seizure and confiscation on behalf of the United States of the moneys also mentioned in the said record and proceedings as having been deposited with the plaintiff in error, and against the exemption and protection claimed by the said plaintiff in error under and by virtue of the decree of the district court of the United States for the southern district of New York, which condemned as forfeited to the United States the moneys mentioned and referred to in said decree and in the said record and proceedings aforesaid, and by reason of the delivery and payment over of said moneys by the plaintiff in error, under and by virtue of the seizure, forfeiture, and condemnation mentioned in the proceedings on which said decree was founded, and of said decree; and in this, to wit, that the supreme court of the State of New York, and also the court of appeals of the State of New York, did decide against the validity of the authority of the President of the United States, and of the marshal of the United States, to cause to be made or to make the seizure of the moneys aforesaid and against the validity of the seizure, confiscation, and condemnation aforesaid; and in this, to wit, that the said
13 courts did decide against the validity of the authority aforesaid and against the validity of the said seizure and of the proceedings, record, and decree of the said district court of the United States for the southern district of New York as a bar and defense to the action

of David Risley, the defendant in error, also mentioned in the said record and proceedings hereinabove first mentioned; and in this, that the said supreme court of the State of New York did exclude as evidence in said action and as a bar and defense thereto the said proceedings, record, and decree of the said district court; and in this, that the court of appeals of the State of New York decided against the validity of said proceedings, record, and decree of said district court and against the claim of the plaintiff in error that the same and the payment thereunder were a complete bar and defense to the said action of the said David Risley, defendant in error, and in favor of the claim made by the defendant in error to recover in said action against the plaintiff in error; and in this, that there was drawn in question the validity of a statute
14 of or an authority exercised under the United States, and the decision was against their validity; and in this, that there was drawn in question the construction of a clause of the Constitution or statute of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution or statute. Whereas, by the law of the land the said judgment ought to have been given for the said plaintiff in error and in favor of such exemption and protection so claimed by the plaintiff in error as aforesaid, and in favor of admitting and allowing the said seizure, confiscation, and condemnation, and the payment thereunder of said moneys as a defense to said action and in favor of admitting and receiving in evidence the said proceedings, record, and decree of said district court as a bar and defense to said action and in favor of the validity of said statute of or authority exercised under the United States, and in favor of the title, right, privilege, or exemption specially set up or claimed under the said clause of the said Constitution or statute of the United States, and against the validity of the said claim of the defendant in error to recover of said plaintiff in error.

15 And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings first aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said plaintiff in error may be restored to all things which it has lost by occasion of the said judgment.

EDGAR S. VAN WINKLE,
Attorney for Plaintiff in Error, 48 Wall street, New York.

(Indorsed:) United States Supreme Court. The Phenix Bank of the City of New York, plaintiff in error, against David Risley, defendant in error. Assignment of error. Edgar S. Van Winkle, attorney for pl'ff in error, 48 Wall street, New York.

16 The United States of America to David Risley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of New York, wherein The Phenix Bank of the city of New York is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Charles J. Folger, chief judge of the court of appeals of the State of New York, this 19th day of January, in the year of our Lord one thousand eight hundred and eighty-one.

CHAS. J. FOLGER.

17 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Samuel Hoff, of said city, being duly sworn, doth depose and say: That on the 21st day of January, 1881, at the office of Beebe, Wilcox & Hobbs, No. 68 Wall street, in the city and county of New York, in the southern district of New York, he served the foregoing citation upon David Risley, defendant in error, by then and there delivering to and leaving with Edward H. Hobbs, esq., one of the said firm of Beebe, Wilcox, and Hobbs, attorneys for the said David Risley, defendant in error, personally, a true copy of said citation, and at the same time and place exhibiting to him the said original citation.

SAMUEL HOFF.

Subscribed and sworn to before me this 22d day of January, 1881.
[SEAL.] E. S. CANDLER,
Notary Public, Kings Co., c't'f filed N. Y. Co.

(Indorsed:) United States Supreme Court. The Phenix Bank of the City of New York, plaintiff in error, against David Risley, defendant in error. Citation to appear in United States Supreme Court. Edgar S. Van Winkle, attorney for plaintiff in error, No. 48 Wall street, New York.

Due and timely service of a copy of within citation is hereby admitted.
Dated January 21, 1881.

BEEBE, WILCOX & HOBBS,
Att'ys for Def't in Error.

18 Court of appeals.

DAVID RISLEY, RESPONDENT,
vs.
THE PHENIX BANK OF THE CITY OF NEW YORK, appellant.

ANDREWS, J.:

The check drawn by the Bank of Georgetown on the defendant, having been drawn on the general deposit of the drawer in the hands of the drawee in the ordinary form of a bank check, did not, of itself, operate as an equitable assignment to the payee of the fund, to the amount of the check. The check was a bill of exchange within the statute that no person shall be charged as an acceptor of a bill of exchange unless his acceptance shall be in writing; and the defendant not having made a written acceptance of the check, no right of action thereon accrued to the plaintiff by reason of the verbal promise to pay the check made by the defendant on its presentation. (1 R. S., 768, sec. 6; Harker vs. Anderson, 21 Wend., 372; Luff vs. Pope, 5
19 Hill., 413; Chapman vs. White, 6 N. Y., 412; Duncan vs. Berlin, 60 id., 153; Att'y Gen. vs. The Continental Life Insurance Co., 71 id., 333.)

The court, on the trial, ruled in accordance with the settled doctrine upon this subject, that the plaintiff was not entitled to recover upon the cause of action founded upon the check and the verbal promise of payment. But the court further ruled that he was entitled to recover upon the third cause of action, which alleged an assignment of $10,000 of the debt owing by the defendant to the Bank of Georgetown, made on the twentieth day of May, 1861, the day on which the check was dated

and delivered to the plaintiff, if the jury should find that concurrently with the giving of the check there was an oral agreement, for a valuable consideration, made between the Bank of Georgetown and the plaintiff, to assign to the latter $10,000 of its debt against the Phenix Bank. The court stated to the jury that if the transaction between the plaintiff and the Bank of Georgetown was simply a purchase of the check or draft the plaintiff could not maintain the action, and that the question for the jury to determine was "whether there was, independent of the check, an agreement of assignment and purchase and sale of $10,000 of the debt from the Phenix Bank to the Bank of Georgetown"; and that, if there was such an agreement the plaintiff was entitled to recover.

There was no written assignment by the Bank of Georgetown to the plaintiff. The Phenix Bank, prior to May 20, 1861, was the correspondent in the city of New York of the Bank of Georgetown, a banking corporation located at Georgetown, South Carolina, and on that date there was on its books a credit to the Bank of Georgetown to the amount of about $18,000, derived from deposits and collections, which sum was then owing by the Phenix Bank to the Bank of Georgetown. The plaintiff was a resident of Georgetown, and had dealings with the Bank of Georgetown. He was examined on the trial as a witness in his own behalf, and testified in substance that on the day when the check was dated, while at the banking-house of the Bank of Georgetown, the president of the bank stated to him that the bank had a claim of $17,000 or $18,000 against the Phenix Bank, and offered to sell it to the plaintiff, stating as a reason that he was afraid it might be lost during the war, and that he was unwilling to carry the risk; that the plaintiff offered to purchase the claim at fifty cents on the dollar, which offer was declined, and the president then offered to sell it for Southern bank bills at par; that the plaintiff then offered, if the bank would divide the claim, to purchase $10,000 of it, upon the terms proposed, which offer was accepted, and the plaintiff thereupon paid the $10,000; that a question arose as to what kind of a transfer should be given, and the president of the bank said he would give the plaintiff an order on the Phenix Bank for the amount, and thereupon gave the plaintiff the check before referred to, and this completed the transaction between the plaintiff and the Bank of Georgetown.

The check was not presented to the Phenix Bank for payment until January 4, 1865. The plaintiff testifies that on that day he presented the check at the bank to the president, and told him he had called to collect it; that the president, after looking at the check, said it was good, and that it would be paid on presentation by some person known to the bank; that the plaintiff thereupon stated to the defendant's president that the Bank of Georgetown had transferred to him so much of its claim against the defendant as was represented by the check.

The next day the check was again presented by a person known to the defendant, and the bank then refused payment on the ground that the debt had, on the morning of that day, been seized by the United States, as forfeited under the confiscation acts of Congress.

The amount standing to the credit of the Bank of Georgetown on the books of the Phenix Bank January 4, 1865, was $12,117.38. The credit existing May 20, 1861, had *had* been reduced by checks charged against the account, drawn by the Bank of Georgetown after that date, and paid by the Phenix Bank; but no new deposit had been made, and the

Phenix Bank had no lien upon or relation to the fund remaining
23 in its hands January 4, 1865, except as simple depositary of the Bank of Georgetown.

The defendant denied in its answer the assignment alleged in the complaint, and sought to discredit the plaintiff's testimony in respect to the purchase from the Bank of Georgetown, by introducing his testimony on a former trial, in which he made no allusion to the negotiation for the purchase of the claim, to which he testified on this trial. The defendant also controverted the plaintiff's evidence upon the point of notice to the officers of the defendant, when the check was presented for payment, of the transfer to him by the Bank of Georgetown of $10,000 of its claim. But the jury found for the plaintiff upon these controverted questions, and their finding is conclusive upon this appeal.

It is claimed, however, by the counsel for the defendant, that admitting the truth of the plaintiff's narration of the transaction with the Bank of Georgetown, it did not in law constitute an assignment by the bank to the plaintiff of $10,000 of the debt against the defendant, for the reasons, first, that the contract actually made was re-
24 duced to writing, and is represented by the check, and that oral evidence was inadmissable to show that anything else was contemplated by the parties, except the sale and purchase of a bill of exchange, with the ordinary incidents flowing from that transaction; second, that there was no delivery of any account, document, or writing, showing the existence or character of the debt undertaken to be assigned; and, third, that the alleged assignment only included a part of the general fund on deposit with the defendant to the credit of the Bank of Georgetown.

We are of opinion that neither of these objections is tenable. The relation between the Phenix Bank and the Bank of Georgetown was that of debtor and creditor. The order drawn by the Bank of Georgetown upon the Phenix Bank was not a contract between the parties to this action, and as between the plaintiff and the Bank of Georgetown; the giving of the order was equally consistent with the ordinary transaction of the purchase of a draft, or the assignment of the debt against the Phenix Bank, to the amount of the order, and the taking of
25 the order as a convenient method of enabling the plaintiff to collect and receive the portion of the debt assigned.

The fact that the plaintiff became the owner of the debt, by agreement between him and the Bank of Georgetown, made contemporaneously with the delivery of the check, imposed no new obligation upon the defendant. The Phenix Bank was not bound to give a written acceptance of the order more in the one case than in the other. Nor could it be made liable upon the check without a written acceptance. It was bound, as it had always been, to account for the fund in its possession to the Bank of Georgetown or to its assignee, and pay it over on demand of the legal owner.

In respect to the claim that there was no delivery to the plaintiff at the time of the alleged transfer of any account or document showing the claim intended to be assigned, it is to be observed that the claim of the Bank of Georgetown against the Phenix Bank rested in open account on the books of the respective banks. The chose in action
26 assigned was not a note or bond, or other written obligation, the retention of which by the alleged assignor would, in most cases, be strong if not conclusive evidence that the assignment had not been completed. But we are of opinion that a parol assignment of an

account may be made without writing or delivery of any written statement of the claim assigned, so as to vest in the assignee a right to proceed in his own name for the recovery of the debt, provided only that the assignment is founded on a valid consideration between the parties.

In Heath vs. Hall, 4 Taunt., 327, Lord Mansfield said: "If two men agree for the sale of a debt, and one of them gives the other credit in his books for the price, that may be a very good assignment in equity; its vesting in parol is no objection." In Tibbits vs. George, 5 Ad. & El., 107, a verbal assignment of a portion of a debt was held to be good. Lord Denman said: "None of the authorities which have been cited show that it is necessary that the assignment should be in writing, in order to pass an equitable interest, although in very many cases
27 there was a writing." In Crocker vs. Whitney, 10 Mass., 316; Jackson, J., speaking of an assignment to the plaintiff of money of the assignor in the hands of the defendant, said: "But there appears to be no reason why it may not be as well affected by a verbal request or assignment." And in Dunn vs. Snell, 15 Mass., 481, it was held that the delivery of an execution was a good equitable assignment of a judgment; and Parker, C. J., said: "It is not doubted that this debt, upon which this judgment was rendered, might have been assigned in writing without seal, or even, according to the decisions, without writing." The claim that there can be no valid assignment of a part of an entire debt or obligation, is opposed to the well settled rule in this State. (Taylor vs. Bates, 5 Cow., 376; Wheeler vs. Wheeler, 9 id., 34; Pattison vs. Hull, 9 id., 747; Field vs. The Mayor, 6 N. Y., 179.) The point was ruled in the same way by the Court of King's Bench, in Tibbits vs. George, supra.

The tendency of modern decisions is in the direction of more fully protecting the equitable rights of assignees of choses in action,
28 and the objection that to allow an assignment of part of an entire claim, might subject the creditor to several actions to enforce a single obligation, has much less force under a system which requires all parties in interest to be joined as parties to the action. (See note to Morton vs. Naylor, 1 Hill, 585.)

We come then to the principal remaining question in the case, arising upon the exception of the defendant to the exclusion on the trial of the record of the district court of the United States for the southern district of New York, offered to sustain the defense alleged in the answer, that the deposit in the Phenix Bank to the credit of the Bank of Georgetown, was on the 5th day of January, 1865, duly seized and attached, in pursuance of proceedings instituted on that day by the United States, under the act of Congress approved Aug. 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," and the subsequent act approved July 17, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes;" and that subsequently, on or about the 24th day of January, 1865, in pursuance of the decree
29 of the court duly made in such proceedings, the defendant paid over to the marshal the sum of $12,117.38, the whole amount of the credit of the Bank of Georgetown with the Phenix Bank. It appears by the record of the district court, which is printed in full in the case, that on the 5th day of January, 1865, a libel of information was filed by the attorney of the United States for the district, in which the proceedings were instituted "against the estate, property, money, stocks, credits and effects, to wit, against $15,000 (fifteen thousand dollars),

more or less, belonging to the Bank of Georgetown, a corporation doing business in the State of South Carolina, which said $15,000 is now in cash, and is now on deposit in the Phenix Bank, a corporation doing business in the city of New York." The information, or libel of information, as it is called, alleges a seizure by the marshal on that day, by and under the authority of the President of the United States, and in obedience to the instructions of the Attorney-General, and in pursuance of the acts of Congress before referred to, of "the estate and property, money,
30 stocks, credits, and effects aforesaid, to the end that the same may be confiscated, forfeited, and condemned," as provided in said acts. The information then proceeds to set forth various causes of forfeiture under the acts of 1860 and 1862, viz: 1. That the Bank of Georgetown acquired the property seized with the intent specified in the act of 1861, and used and employed it with that intent. 2. That the corporation since the 17th day of July, 1862, acted as the fiscal agent of the Confederate Government and of several of the States of the Confederacy, and accepted such agency from the several States after the date of the ordinances of secession of those States. 3. That since the 17th of July, 1861, the Bank of Georgetown, while owning property in the State of New York, had given aid and comfort to the rebellion in the ways and by the acts set forth in the information. 4. That the corporation after the passage of the act of July 17, 1862, being engaged in aiding and abetting the rebellion, did not within sixty days after the proclamation of the President of July 25, 1862, cease therefrom.

31 The information avers that by reason of the causes alleged the "said property, estate, and effects" were liable to confiscation and condemnation under the acts of Congress, and demands judgment sentencing it to be condemned as confiscated and forfeited to the United States.

On the same day on which the information was filed, viz, January 5, 1865, a monition, so called, was issued to the marshal reciting the filing of an information against fifteen thousand dollars, more or less, belonging to the Bank of Georgetown, "which said $15,000 is now in cash and is now on deposit in the Phenix Bank," and directing the marshal to attach the "said fifteen thousand dollars," and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned, to appear before the court in which the proceedings were taken, on the 24th day of January, 1865, at an hour named, to interpose a claim for the same and make their allegations in that behalf. On the 24th of January the marshal
32 made his return to the monition that he had on the 5th day of January, 1865, attached "$13,000, more or less, deposited in the Phenix Bank belonging to the Bank of Georgetown," and had given due notice as required thereby. On the same day a decree was entered that "twelve thousand one hundred and seventeen dollars $\frac{38}{100}$ belonging to the Bank of Georgetown, in the State of South Carolina, and now on deposit in the Phenix Bank, in the city of New York, which said twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars has been heretofore seized by the marshal in this proceeding, be, and the same is, hereby condemned as forfeited to the United States," and directing a writ of venditioni exponas to issue, returnable Feb. 14, 1865, and that upon the return thereof the marshal pay into the registry $12,117.38 to abide the further order of the court.

The decree decides that it was made upon default, and the record does not show that any proofs were taken of the facts alleged in the

information. The venditioni exponas was issued on the day the decree was entered, and on the 26th of January, two days thereafter,
33 the marshal returned that he had collected from the Phenix Bank $12,117.38, and had paid it to the clerk of the court. On the 27th day of January a decree distributing the fund collected was made, awarding it in equal parts to the United States and the informer.

We are of opinion that the record of the confiscation proceedings, if admitted in evidence, would have constituted no defence to the action.

The claim of the plaintiff to the fund in question had its origin in an assignment from the Bank of Georgetown made May 20, 1861, prior to the passage of either of the confiscation acts under which the proceedings for forfeiture were taken, and if notice to the Phenix Bank was necessary to complete the title of the assignee, such notice, as the jury have found, was given to the bank January 4, 1865, the day prior to the seizure by the marshal.

The decree of the district court adjudges that the property seized
34 was the property of the Bank of Georgetown contrary to the fact as found by the verdict in this case. The question arises whether the adjudication of the district court concludes the plaintiff from contesting the fact that the property condemned was at the time of the seizure and decree the property of that corporation. If proceedings and judgment under the confiscation acts are strictly in rem, it would be difficult to deny the conclusiveness of the judgment in respect to every material fact adjudicated thereby. To such proceedings all persons are deemed to be parties, and persons claiming any right or interest hostile to the proceedings are bound to come in and assert such right or interest; and failing to do so, they are conclusively bound by the judgment.

A judgment in rem operates upon the status of the subject matter involved and renders it what it declares it to be. Thus, the sentence of a court of admiralty, having jurisdiction, decreeing a ship to be a lawful prize, is conclusive as to every ground of fact upon which it proceeds, and until reversed on appeal, the facts adjudged are conclusively
35 established thereby as against the whole world. (Bernardi vs. Motteux, Doug., 581; Rose vs. Himely, 4 Cranch, 241; Broom Leg. Max., 920; 2 Smith Lead. Cas., 808, and cases cited.)

But as we understand the decisions of the Supreme Court of the United States in Day vs. Micou, 18 Wall., 156, and Conrad vs. Waples, 96 U. S., 279, confiscation proceedings under the acts of Congress referred to, while in the nature of proceedings in rem, operate only to divest the title and interest of the party alleged to be the owner of the property seized and as against whom the seizure is made, and that judgment of confiscation and forfeiture does not divest the title of third persons originating prior to the seizure, or of the real owner not proceeded against.

In Day vs. Micou, it was held that the interest of a mortgagee, under a mortgage executed in 1858, was not divested by proceedings under the confiscation act of July 17, 1862, against the owner of the land mortgaged and a sale pursuant to the judgment thereon. Strong, J., in speaking for the majority of the court, after referring to the
36 seventh section of the act, said: "What property is thus brought within the jurisdiction of the district court? Beyond doubt the property which had been seized: that is, the estate and property of the offending person, and no other. It is true proceedings in rem were ordered to be instituted in the district court, but the question remains, what was the res against which the proceedings were directed? The

answer must be, that which was seized and brought within the jurisdiction of the court. A condemnation in a proceeding in rem does not necessarily exclude all claim to other interests than those which were seized. In admiralty cases and in revenue cases a condemnation and sale generally pass the entire title to the property condemned and sold. This is because the thing condemned is considered as the offender or the debtor and is seized in entirety. But such is not the case in many proceedings which are in rem. Decrees of courts of probate or orphans' courts directing sales for the payment of a decedent's debts or for
37 distribution are proceedings in rem. So are sales under attachments or proceedings to foreclose a mortgage quasi proceedings in rem, at least. But in none of these cases is anything more sold than the estate of the decedent, or of the debtor or the mortgagor, in the thing sold. The interests of others are not cut off or affected." The learned justice concludes as follows: "If, then, as we hold, the property and estate of J. P. Benjamin was all that was seized, or all that could be seized and condemned in these confiscation proceedings, those who held other interests in the land were not bound to come in and assert their claims. Their interests did not pass to the purchaser at the sale, and they remain unaffected by the decree of condemnation and the sale thereunder." Conrad vs. Waples was ejectment by the plaintiff claiming title under a deed executed by his father, Charles M. Conrad, May 6, 1862, of lands in the city of New Orleans. The defendant claimed title under a deed from the marshal of the United States, exe-
38 cuted in March, 1865, upon a sale under a decree of the district court, rendered in February of that year condemning and forfeiting the property to the United States, as that of Charles M. Conrad in proceedings under the confiscation act of July 17, 1862. The plaintiff and his father, when the plaintiff's deed was executed, were engaged in the rebellion, and so continued until the close of the war. The father was a member of the Confederate Congress, and the plaintiff was an officer in the Confederate Army. The question presented for decision was: whether the title of the plaintiff, under his deed of May 6, 1862, was divested by the decree of February, 1865, condemning and forfeiting the land as the property of Charles M. Conrad and the sale thereunder to the defendant, and the court, referring to and approving the language of Strong, J., in Day vs. Micou, held that it was not, and reversed the judgment of the court below, which sustained the defendant's title. It will be noticed that in this case the land was confiscable as against the plaintiff, who, as has been stated, was an officer in the Confederate service, but having been seized and
39 condemned as the property of Charles M. Conrad, the condemnation and sale did not, as the court decided, bar the plaintiff's title. We understand the case to decide the principle that where the property of A, under a title originating prior to the passage of the confiscation acts, is seized, condemned, and sold, in proceedings under these acts as the property of B, the title of A is not divested thereby, although his title was derived from B, and although A's title was subject to confiscation, and might have been divested by seizure and sale, in appropriate proceedings for that purpose.

The record of the district court was not a defense to this action for another reason, viz: that the confiscation acts do not contemplate or authorize the confiscation of the property of a corporation, and no jurisdiction was acquired by the district court to proceed for the forfeiture of the debt owing by the Phenix Bank to the Bank of Georgetown. That the property of a corporation is not confiscable un-

40 der the confiscation acts was very precisely stated in the opinion of Mr. Justice Strong in Planter's Bank vs. Union Bank, 16 Wall., 496. The opinion upon this point was perhaps not essential to the decision made; but it cannot be supposed, in view of the importance of the subject, and the frequent occasions upon which the court had been called upon to consider the scope and effect of the confiscation acts, that the remarks of Mr. Justice Strong upon the subject, in an opinion in which the whole court concurred, were made without full consideration, or without the acquiescence of his associates. And considering the question de novo, I fully concur in the opinion of the learned justice upon the point stated.

The title of the act of July 17, 1862, indicates that it related to the punishment of natural persons and to the confiscation of the property of individuals who were rebels, within the ordinary meaning of the term. It was "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other
41 purposes." The first four sections of the act prescribe and regulate the punishment of persons committing treason, or engaging and assisting in the rebellion, and manifestly can have no application to corporations. Corporations cannot suffer death or be imprisoned as a punishment for crime. The fifth section authorizes the seizure of the property of six classes of persons enumerated in the section. 1. Of any officer in the rebel army or navy. 2. Of the acting president and other officers of the so-called Confederate States. 3. Of the governor, members of the legislature, or judge, of any of the Confederate States. 4. Of persons who, having held any office of honor, trust, and profit in the United States, shall thereafter hold any office in the Confederate States. 5. Of persons thereafter holding any office or agency under the government of the Confederate States, or of any of the several States of the Confederacy, subject to a proviso not necessary to be stated. 6. Of persons owning property in a loyal State, etc., who shall thereafter assist, and give aid and comfort to the rebellion. The sixth sec-
42 tion provides for the seizure of property of persons who, having engaged in the rebellion, shall not cease to aid and abet the same after the expiration of sixty days after the proclamation made by the President.

The confiscation acts did not authorize the seizure and confiscation of the property of all rebels. Under the act of Aug. 6, 1861, it was only property acquired or used by the owner in aid of the rebellion, which was made subject to seizure and condemnation; and under the act of July 17, 1862, it was the property only of the persons specially mentioned in the fifth and sixth sections.

It is doubtless true that corporations are persons for certain purposes in contemplation of law; and, as a general rule, in construing penal or other statutes relating to persons, corporations will be deemed to be comprehended, "when the circumstances in which they are placed are identical with those of natural persons." Beaston vs. The Farmers' Bank, 12 Peters, 134; U. S. vs. Amedy, 11 Wheat., 412. But this is a rule of construction merely and yields to an indication of a con-
43 trary intention derived from a consideration of the scope and purpose of the particular statute.

We are of opinion that such indication does exist in the confiscation acts. The statutes of 1861 and 1862 are in pari materia. They relate to the property of sentient beings possessing a will, impelled by motives, and capable of forming an intent. As said by Strong, J., "Both of these acts had in view property of natural persons who were public en

emies, of persons who gave aid and comfort to the rebellion, or who held office under the Confederate Government or under one of the States composing it."

The district court, upon this construction of the confiscation acts, in directing the seizure and decreeing the confiscation of the property of the Bank of Georgetown, acted wholly outside of its jurisdiction, and the entire proceedings, including the seizure, condemnation, and distribution, were void and constituted no justification to the defendant in paying over the fund to the marshal.

44 The confiscation act did not confer upon the district court general jurisdiction to seize and confiscate enemies' property. It had no jurisdiction whatever to seize and condemn the property of corporations, but of natural persons only. That the case was not one within the jurisdiction of that court, appeared upon the very inception of the proceedings. The information disclosed that the property proceeded against was the property of a corporation; the mandate of the court directed its seizure as the property of a corporation, and it was declared to be the property of a corporation in the final sentence of condemnation. Where a court has jurisdiction it has a right to decide every question which occurs in the cause (Elliott vs. Peirsol, 1 Peters, 328), and an erroneous ruling or decision in the course of the proceedings does not render its judgment void; but a court authorized by statute to entertain jurisdiction in a particular case only, if it undertakes to exercise the power and jurisdiction conferred in a case to which the statute

45 has no application, acquires no jurisdiction and its judgment is a nullity, and will so be treated when it comes in question, either directly or collaterally. (State of Rhode Island vs. Com. of Massachusetts, 12 Peters, 657; Wilcox vs. Jackson, 13 id., 511; Thompson vs. Wallace, 18 Wall., 457; The confiscation cases (Strong J.), 20 id., 107; Chemung Canal Bank vs. Judson, 8 N. Y., 454.)

The trial judge rejected the record of the district court on the ground that the proceeding was against specific money, and not against the debt or credit of the Bank of Georgetown with the Phenix Bank, and that the credit was not forfeited or affected by the proceedings. We deem it unnecessary to consider this particular ground of objection to the record, for the reason that the other grounds considered sustain the ruling of the court in refusing to admit the record in evidence.

We are of opinion that no error was committed on the trial.

The plaintiff's letter to the defendant's president, of the 5th of February, 1865, was not, we think, material to any issue in the case.

46 It would not if admitted have thrown any light upon the question whether the plaintiff's transaction with the Bank of Georgetown was a purchase of the debt, or on the question of notice to the defendant.

We think the judgment should be affirmed.

"All concur."

A copy.

H. E. SICKELS,
Reporter, per C.

(Indorsed:) Risley vs. The Phenix Bank. Opinion. Andrews, J.

47 Know all men by these presents that we, Peter M. Bryson and William Brice, both of the city, county, and State of New York, and the Phenix National Bank of the city of New York, sued as the Phenix Bank of the city of New York, are held and firmly bound unto

David Risley, defendant in error, in the full and just sum of twenty-five thousand dollars, to be paid to the said David Risley, defendant in error, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this nineteenth day of January, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at a stated term of the court of appeals in the State of New York, on appeal from the supreme court of the State of New York, in a suit depending in said court, between said David Risley, plaintiff, and the Phenix Bank of the city of New York, defendant, judgment was rendered against the said The Phenix Bank of the city of New York, in favor of the said David Risley, and the said The Phenix Bank of the city of New York having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said David Risley, him citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said The Phenix Bank of the city of New York shall prosecute the said writ of error to effect, and answer all damages and costs if it fails to
48 make its plea good, and just damages for delay, and costs and interest, then the above obligation to be void, else to remain in full force and virtue.

P. M. BRYSON. [L. S.]
WILLIAM BRYCE. [L. S.]
JOHN PARKER, *Cash'r.* [L. S.]

Sealed and delivered in presence of—
E. S. CANDLER.

Approved by—

CHAS. J. FOLGER,
Ch. Judge, &c.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Peter M. Bryson and William Bryce, both of the city and State of New York, being duly severally sworn, each for himself says that he is a freeholder within the State of New York, and worth the sum of fifty thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from levy and sale under an execution.

P. M. BRYSON.
WILLIAM BRYCE.

Subscribed and sworn to before me, this 19th day of January, 1881.
[L. S.] E. S. CANDLER,
Notary Public Kings Co. Cert. filed N. Y. Co.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

On this 19th day of January, 1881, before me personally came Peter M. Bryson and William Bryce, to me personally known, and known to me to be the individuals described in and who executed the within bond, and severally acknowledged to me that they executed the same.
49 And on the same day, before me, came John Parker, with whom

I am personally acquainted, and known to me to be the cashier of the Phenix National Bank of the city of New York, within named, who, being by me duly sworn, did depose and say that he resides at Montrose, New Jersey; that he is the cashier of the Phenix National Bank, of the city of New York, within named; that he knew the corporate seal of said bank; that the seal affixed to the within bond is such corporate seal; that the same was affixed thereto by order of the board of directors of said bank, and that he signed his name thereto as cashier by the like order.

Witness my hand and official seal at the city of New York, this 19th day of January, 1881.

[L. S.]

E. S. CANDLER,
Notary Public Kings Co. Cert. filed N. Y. Co.

(Indorsed:) United States Supreme Court. The Phenix Bank of the City of New York, plaintiff in error, against David Risley, defendant in error. Copy bond. Edgar S. Van Winkle, attorney for plaintiff in error, 48 Wall street, New York.

50 N. Y. court of appeals.

DAVID RISLEY, PLAINTIFF, RESPONDENT,
against
THE PHENIX BANK OF THE CITY OF NEW YORK, defendant, appellant.

Case on appeal.

Edgar S. Van Winkle, attorney for appellant.
Beebe, Wilcox & Hobbs, attorneys for respondent.

51 Court of appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 18th day of January, in the year of our Lord one thousand eight hundred and eighty-one, before the judges of said court.

Witness the Hon. Charles J. Folger, chief judge, presiding.

E. O. PERRIN,
Clerk.

Remittitur January 20th, 1881.

52 DAVID RISLEY, RESP'D'T,
ag'st
THE PHENIX BANK OF THE CITY OF NEW YORK, app'l't.

Be it remembered that on the eighth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, the Phenix Bank of the City of New York, the appellant in this action, came here into the court of appeals, by Edgar S. Van Winkle, its attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court for the State of New York; and David Risley, the respondent in said action, afterwards appeared in said court of appeals by Beebe, Wilcox & Hobbs, his attorneys.

53 Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Mr. Samuel Hand, of counsel for the appellant, and by Mr. John E. Risley, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

And it was also further ordered that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

54 Therefore, it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Jan'y 20, 1881.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] E. O. PERRIN,
Clerk.

55 Supreme court, city and county of New York.

DAVID RISLEY, PLAINTIFF,
against
THE PHENIX BANK OF THE CITY OF NEW YORK, defendant.

Summons for a money demand on contract. (Com. not. ser.)

[U. S. I. R. stamp, 50c., cancelled on original.]

To the above-named defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of this court, at the city hall of the city of New York, and to serve a copy of your answer to the said complaint on the subscribers, at their office, 74 Wall street, in the city of New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of ten thousand dollars, with interest from the 20th day of May, one thousand eight hundred and sixty-one, besides the costs of this action.

Dated January 14, 1867.

BEEBE, DEAN & DONOHUE,
Plaintiff's Attorney.

56 Supreme court, city and county of New York.

DAVID RISLEY, PLAINTIFF,
vs.
THE PHENIX BANK OF THE CITY OF NEW YORK, defendant.

First. The amended complaint of David Risley, plaintiff, by Beebe, Wilcox & Hobbs, his attorneys, shows for cause of amended complaint that on and prior to the 20th day of May, 1861, the Bank of Georgetown, of Georgetown, South Carolina, a corporation duly organized under the laws of the State of South Carolina, had on deposit with the Phenix Bank of the city of New York money to an amount largely exceeding the sum of ten thousand dollars; and by the custom and agreement between the said bank, when said money was so deposited, the defendant undertook, in consideration of such deposit, to accept and pay to such persons as should hold the same, any drafts or checks that should be drawn by the depositor on the said defendant, to the amount so deposited with said defendant by said Bank of Georgetown. That on or about the 20th day of May, 1861, while said amount exceeding ten thousand dollars was so on deposit in the hands of the defendant and belonging to the said Bank of Georgetown, the said Bank of Georgetown, for a full and valuable consideration to them paid, made and delivered to the plaintiff a check, of which the following is a copy, to wit: BANK OF GEORGETOWN, S. C., GEORGETOWN, May 20th,
57 1861. Pay to the order of David Risley ten thousand dollars. J. G. HENNING, Prest. To PHENIX BANK, New York, and of which the defendant had notice. That the plaintiff is now, and has been ever since the making thereof, the owner and holder of the said check, and that he has at various times between the date thereof and the commencement of this action presented the said check for payment to the defendant, and demanded payment thereof, but that it neglects and refuses to pay the same; and that the said defendant had not, when the said check was presented for payment, and payment demanded, parted with the said money, or any part thereof. That there is now due to the plaintiff from the defendant, on said check, the sum of ten thousand dollars, with interest thereon from the 4th day of January, 1865.

Second. For a further and separate cause of action, the plaintiff alleges that on the 20th day of May, 1861, and at the several dates hereinafter mentioned, the defendant held on deposit for and on account of the said Bank of Georgetown, and subject to its order, a large sum of money, to wit, twelve thousand dollars. That afterwards, to wit, on or about the day last mentioned, the said Bank of Georgetown, for a valuable consideration, drew and delivered to the plaintiff its check on the defendant, in the words and figures following, to wit: BANK OF GEORGETOWN, S. C., GEORGETOWN, May 20th, 1861. Pay to the order of David Risley ten thousand dollars. J. G. HENNING, Prest. To PHENIX BANK, New York. And thereby required the defendant to pay to the plaintiff, or to his order, at any time thereafter, when such payment should be demanded, the said sum of ten thousand dollars. That the plaintiff is, and has been ever since the said delivery thereof to him, the lawful owner and holder of said check.

That afterwards, to wit, on or about the 4th day of January, 1865, the said large sum of money deposited by the Bank of Georgetown, as aforesaid, being still on deposit with the defendant, the plaintiff
58 duly presented said check to the defendant at its banking house

in the city of New York, and duly demanded payment thereof, and thereupon the defendant, by its cashier, admitted that said sum of money, deposited as aforesaid, still remained on deposit, and that said check was good, and in consideration of the premises the defendant then and there promised to pay the amount of said check to the plaintiff or to his order, whereby the defendant became liable to the plaintiff in the amount of the said check, to wit, ten thousand dollars.

That since the last mentioned date, and prior to the commencement of this action, the plaintiff heretofore demanded of the defendant payment of the said sum, but that no part thereof has been paid.

Third. And for a further and separate cause of action the plaintiff alleges that on the 20th day of May, 1861, the said defendant was indebted to the said Bank of Georgetown in the sum of ten thousand dollars and upwards, and that on that day the said Bank of Georgetown sold and assigned to the plaintiff the said indebtedness of the defendant to it to the amount of ten thousand dollars; and that the plaintiff has ever since been, and is now, the lawful holder and owner thereof, and brings this action to recover the same.

Wherefore, the plaintiff demands judgment against the defendant for the said sum of ten thousand dollars, with interest thereon from the 4th day of January, 1865, with costs.

BEEBE, WILCOX & HOBBS,
Atty's for Pl'ff.

CITY AND COUNTY OF NEW YORK, *ss:*

Welcome R. Beebe, one of the attorneys for the plaintiff above named, being duly sworn, says that the foregoing amended complaint is true to his own knowledge, except the matters therein stated on information and belief, and as to those matters he believes it to be true.

59 That the reason why this verification is made by deponent and not by the plaintiff himself is because plaintiff is a resident of the State of South Carolina, and is not now within the State, city, or county of New York. That deponent is familiar with the facts stated in the complaint, not only from personal communications had with said plaintiff, but also from his examination and cross-examination of plaintiff as a witness in this case, from correspondence had with plaintiff, and from written instruments and memoranda now in deponent's possession.

W. R. BEEBE.

Sworn to before me this 3d day of June, 1875.

T. F. HASCALL,
Notary Public, N. Y. Co.

Supreme court, city and county of New York.

DAVID RISLEY, PLAINTIFF,
against
THE PHENIX BANK OF THE CITY OF NEW YORK, defendant.

The defendant answers to the amended complaint in this action as follows:

To the first cause of action.

First. As a first and separate defense the defendant denies
60 each and every allegation in said amended complaint contained as a first cause of action, except as hereinafter expressly admitted in the second defense to said first cause of action.

Second. As a second and separate defense the defendant states that on and prior to the 20th day of May, 1861, the Bank of Georgetown, of Georgetown, in the State of South Carolina, mentioned in said amended complaint, had on deposit with the defendant ten thousand dollars and upwards, subject only to the usual custom, agreement, and laws governing such and similar deposits in bank, but not to any special agreement or custom in regard thereto, or to any such as is alleged in said amended complaint.

That such amount of money so on deposit on the day and year aforesaid remained on deposit until on or about the fifth day of January, 1865, when the whole amount on deposit for or to the credit of said Bank of Georgetown was duly seized and attached by the United States of America, and in and by virtue of certain proceedings duly had in the district court of the United States for the southern district of New York, said court having jurisdiction in the premises, a monition was duly issued, and the same was duly served on this defendant by the United States marshal for the southern district of New York, and thereupon such proceedings were duly had and taken in said court, in those proceedings which said court had jurisdiction thereof; that afterwards, and on or about the twenty-fourth day of January, 1865, a certain decree of said court was duly given and made, and thereupon and on said day a duly authenticated copy thereof was duly served upon this defendant, and in pursuance of said decree on the said last named day, the said defendant delivered to the said marshal the sum of twelve thousand one hundred and seventeen dollars and thirty-eight cents, that amount being the whole sum then on deposit with said defendant to the credit of said Bank of Georgetown, and being the same moneys seized and attached as aforesaid.

61 And this defendant states that it has not had on deposit for or to the credit of said Bank of Georgetown since that day any sum of money whatever.

The said defendant further says that the Schedule A, hereunto annexed, contains a true copy of said monition and decree hereinbefore referred to, and which are to be taken as part of this answer and defense.

And said defendant further states that the moneys so seized and attached in the proceedings, and paid over under the decree above mentioned and referred to, included the money on deposit with the defendant mentioned in the first cause of action set forth in said amended complaint.

The said defendant further states that the check or draft mentioned in said amended complaint was not presented for payment until some time after the proceedings on the part of the United States of America hereinbefore referred to had been commenced, and said deposit and credit had been seized and attached as aforesaid.

Third. As a third and separate defense the defendant states, on information and belief, that said plaintiff at the time of the alleged transfer to him of the claim mentioned in the amended complaint as a first cause of action by the Bank of Georgetown, also mentioned in said amended complaint, and from thence till long after the twenty-fourth day of January, 1865, was a rebel to the United States Government, residing in one of the States then in rebellion, or was engaged in breaking or running the blockade of said States established by said government.

Fourth. And for a fourth and separate defense the defendant states

that this action was not commenced within six years after the said cause of action accrued, and that the same is barred.

62 To the second cause of action:

First. As a first and separate defense:

The defendant denies each and every allegation in said amended complaint contained as a second cause of action, except as expressly admitted in the above second separate defense to the first cause of action.

Second. As a second and separate defense:

The defendant here refers to and states anew all the statements and allegations contained hereinabove in the second defense to the first cause of action the same as though they were here actually fully set orth and repeated, and said defendant makes the monition and decree set forth in Schedule A, above referred to, a part of this answer and defense.

And said defendant further states that the moneys so seized and attached in the proceedings, and paid over under the decree above mentioned and referred to, included the twelve thousand dollars mentioned in said second cause of action set forth in said amended complaint.

Third. As a third and separate defense:

The defendant states, on information and belief, that said plaintiff, at the time of the alleged transfer to him of the claim mentioned in the amended complaint as a second cause of action by the Bank of Georgetown, also mentioned in said amended complaint, and from thence till long after the twenty-fourth day of January, 1865, was a rebel to the United States Government, residing in one of the States then in rebellion, or was engaged in breaking or running the blockade of said States established by said government.

Fourth. As a fourth and separate defense:

The defendant states that this action was not commenced within six years after the said cause of action accrued, and that the same is barred.

63 To the third cause of action:

First. As a first and separate defense:

The defendant denies each and every allegation in said amended complaint contained as a third cause of action, except as expressly admitted in the above second defense to the first cause of action.

Second. As a second and separate defense:

The defendant here refers to and states anew all the statements and allegations contained hereinabove in the second defense to the first cause of action the same as though they were here actually fully set forth and repeated, and said defendant makes the monition and decree set forth in Schedule A, above referred to, a part of this answer and defense.

And said defendant further states that the moneys so seized and attached in the proceedings and paid over under the decree above mentioned and referred to included the moneys mentioned in said third cause of action set forth in said amended complaint as being due to the Bank of Georgetown.

Third. As a third and separate defense:

The defendant states, on information and belief, that said plaintiff, at the time of the alleged transfer to him of the claim mentioned in the amended complaint as a third cause of action by the Bank of Georgetown, also mentioned in said amended complaint, and from thence till long after the twenty-fourth day of January, 1865, was a rebel to the United States Government, residing in one of the States then in rebellion, or was engaged in breaking or running the blockade of said States established by said government.

Fourth. As a fourth and separate defense:

64 The defendant states that this action was not commenced within six years after the said cause of action accrued, and that the same is barred.

Wherefore the defendant demands judgment, and that said amended complaint be dismissed with costs.

EDGAR S. VAN WINKLE,
Defendant's Attorney.

CITY AND COUNTY OF NEW YORK, *ss:*

John Parker, being duly sworn, says that he is cashier of the defendant, and that the foregoing answer is true to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

JOHN PARKER.

Sworn to before me this 23d day of June, 1875.

EDWIN F. COREY, JR.,
Notary Public, N. Y. Co.

SCHEDULE A.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

[L. S.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas an information hath been filed in the district court of the United States for the southern district of New York, on the fifth day of January, in the year of our Lord one thousand eight hundred and sixty-five, by E. Delafield Smith, esquire, United States district attorney, on behalf of the United States of America, and the informer therein mentioned, against ($15,000) fifteen thousand dollars, more or less,

65 belonging to the Bank of Georgetown, a corporation doing business at Georgetown, in the State of South Carolina, which said fifteen thousand dollars is now in cash, and is now on deposit in the Phenix Bank, a corporation doing business in the city of New York, for the reasons and causes in the said information mentioned, and praying the usual process and monition of the said court, in that behalf to be made, and that all persons interested in the said fifteen thousand dollars, more or less, may be cited in general and special to answer the premises, and all proceedings being had that the said fifteen thousand dollars, more or less, may for the causes in the said information mentioned be condemned as forfeited to the use of the United States and the informer mentioned.

You are therefore hereby commanded to attach the said fifteen thousand dollars, more or less, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said information, that they be and appear before the said court, to be held in and for the southern district of New York, on the 24th day of January, 1865, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 5th day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of our Independence the eighty-ninth.

GEORGE F. BETTS, *Clerk.*

E. DELAFIELD SMITH,
U. S. District Attorney.

66 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms in the city of New York, in the said district, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and sixty-five.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
CERTAIN MONEY ON DEPOSIT IN THE PHOENIX BANK of the city of New York, belonging to the Bank of Georgetown, of Georgetown, South Carolina.

The monition in this case having been heretofore returned, and the usual proclamation having been made, and the default of all persons being duly entered, it is thereupon, on motion of E. Delafield Smith, esq., attorney for the United States, ordered, sentenced, and decreed by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, belonging to the Bank of Georgetown, of Georgetown, in the State of South Carolina, and now on deposit in the Phenix Bank of the city of New York, which said twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars has been heretofore seized by the marshal in this proceeding, be and the same is hereby condemned as forfeited to the United States.

67 And it is further ordered, adjudged, and decreed that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 14th day of February, 1865, and upon the return thereof the marshal pay into the registry of this court the sum of twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, there to abide the further order of this court.

[SEAL.] (Signed) SAMUEL R. BETTS.

A true copy.

GEO. G. BETTS, *Clerk.*

Rec., New York, January 25, 1865, from Phenix Bank, New York, the sum of twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, as set forth in the above decree.

$12,117.38.

[L. S.] ROBERT MURRAY,
U. S. Marshal.

Supreme court, circuit.

JANUARY 15th, 1878.

Present: Hon. Charles H. Van Brunt, justice.

DAVID RISLEY
against
THE PHENIX BANK OF THE CITY OF NEW YORK.

I hereby certify that this cause was this day tried by the court
68 and a jury and a verdict rendered therein for the plaintiff for the sum of $19,111 64/100. An allowance of 5 per cent. granted. Motion for a new trial denied. Stay of proceedings of thirty days to make a case.

Fees paid.

HENRY A. GUMBLETON, *Clerk.*

Supreme court, city and county of New York.

DAVID RISLEY
vs.
THE PHENIX BANK OF THE CITY OF NEW YORK. } Judgment.

This cause having come on to be tried before Hon. Charles H. Van Brunt, justice, and a jury at a circuit court of the supreme court held in and for the city and county of New York on the 10th, 14th, and 15th days of January, 1878, and the proofs of the respective parties having been taken, and the arguments of counsel having been heard thereon, and the cause having been submitted to the jury, upon the charge of the court, and the jury having returned a verdict for the plaintiff for the sum of nineteen thousand one hundred eleven and 64/100 dollars damages, and the costs of the plaintiff having been taxed at the sum of fourteen hundred seventy-one and 52/100 dollars:

Now, on motion of Beebe, Wilcox & Hobbs, attorneys for the plaintiff, it is ordered and adjudged that said David Risley, the plaintiff in this action, recover of and from The Phenix Bank of the City of
69 New York, the defendant therein, the sum of nineteen thousand one hundred eleven and 64/100 dollars damages, together with the sum of fourteen hundred seventy-one and 52/100 dollars cost, as the same having been taxed, making in all the sum of twenty thousand five hundred eighty-three and 16/100 dollars, and that the plaintiff have execution against the defendant therefor.

Dated February 14th, 1878.

N. Y. supreme court, city and county of New York.

DAVID RISLEY
against
THE PHENIX BANK OF THE CITY OF NEW YORK.

This action was commenced on the 17th day of January, 1867, by the service of the summons.

The complaint was served on April 5th, 1867, and the answer on May 24th, 1867.

The action was referred to Henry Nicoll, esq., referee, by order of September 25th, 1871, and the trial was had before the referee on October 19th and November 9th and 17th, 1871, when the testimony of the plaintiff was taken, and, pending a motion made by the defendant's counsel to the referee for a nonsuit, the plaintiff moved for, and, by order of September 7th, 1874, obtained leave to make and serve an amended complaint.

The amended complaint was served on June 3d, 1875, and the answer thereto on June 24th, 1875.

70 There has been no change of parties pending the suit. The order of reference was vacated by order of November 12th, 1875.

On March 14th, 1876, the action came on for trial at circuit before Mr. Justice Van Vorst and a jury, when the amended complaint was dismissed, and the plaintiff was nonsuited on the opening of his counsel.

The general term, by order of July 11th, 1877, ordered a new trial, and the action pursuant to that order came on for trial on the 10th, 14th, and 15th days of January, 1878, at circuit, before Mr. Justice Van Brunt and a jury, and the following proceedings were had:

JANUARY 10TH, 1878.

DAVID RISLEY, called as a witness, being duly sworn, testified:

Examined by Mr. RISLEY, his counsel:

Q. You are the plaintiff in this action?

A. I am.

Q. Where do you reside?

A. Georgetown, S. C.

Q. Where did you reside the 20th of May, 1861?

A. Georgetown, S. C.

Q. You were in business then at that place, were you?

A. Yes, sir.

Q. Did you know of an institution then doing business in that place, a banking corporation called the Bank of Georgetown, S. C.?

A. Yes, sir.

Q. Had you business transactions with them?

A. Yes, sir.

Q. State whether you ever made a purchase of any claim from them against the Phenix Bank.

A. On the 20th of May, 1861, the president of the Bank of Georgetown said to me that he had a claim against the Phœnix Bank for about $17,000 or $18,000, and offered to sell it to me; I asked him to name his price for it and he did so; I asked him why he wanted to sell it; he said he was afraid he might lose it during the war and was not willing to carry the risk that long; he said he was afraid to carry the risk so long and would sell it. I offered him fifty cents on the dollar for

71 the whole claim, which he declined, but he said he would sell it for Southern bank bills at par, and I told him I had not money enough to buy it, but if he would divide it and sell $10,000 of it I would take that much.

Q. Did he say he would do that; what did the president say?

A. He said he would do that.

Q. Then what did you do?

A. We closed the transaction; I asked him what kind of a transfer he would give me, and he said he would give me an order on the Phenix Bank for it. I paid him cash, and he gave me an order on the Phenix Bank for $10,000.

Q. Was there any further conversation between you as to what he should give you—the form of transfer?

A. Yes, sir.

Q. State what that conversation was?

A. There was some conversation. I asked him how I had better have it—in what shape to make it the most easily collected, and he seemed to think it would be better to fill out that kind of an order; in fact, I thought so myself.

Q. Did he fill out an order and give it to you?

A. He did.

What has become of that order?

A. In my various trips here to collect the money I brought my papers with me every time to be ready for the case, and in March, 1866, on my return home the steamer was burned, and I lost my baggage and papers with it, and that order was in it, and all the other papers.

Q. The vessel was burnt up at sea?

A. Yes, sir; we saved nothing except what we stood in.

Q. When was that?

A. That was in March, 1866.

Q. (Handing paper to witness.) Is that a copy of the order?

A. This is a true copy of the order. (Marked Ex. A, January 10th, 1878.—C. H. V. B.)

Q. The president of the bank after making this order or check delivered it to you?

A. Delivered it to me, and received the amount I agreed to pay him.

Did you pay him the money before getting this order or after?

A. I think the exchange took place about the same time *time;* as he handed me one I handed him the other.

72 Q. What did you do with the check then?

A. I kept the check in my possession for a long time, but I finally endorsed it to D. J. Seeley, of St. Johns, New Brunswick, intending to send it to him, but failing to get it there it was returned to me, and I kept it among my papers from that time until the time it was presented.

Q. State when you arrived in New York City?

A. On January 4th, 1865.

Q. Give a detailed statement of what you did on that day?

A. I arrived in New York City on that morning about eight o'clock, and stopped at the Metropolitan Hotel; then first thing I then did was to inquire for the provost marshal's office, as it was obligatory upon all persons coming from the South to subscribe to the oath of allegiance within a certain space of time; then, after getting through with that, I went directly to the Phenix Bank in Wall street; I entered the bank and went to the teller and asked him for the cashier, and was referred to a room in the back part of the bank; as I entered that room I saw two men there, who I afterwards learned to be Peter M. Bryson, the president, and J. Parker, the cashier; Mr. Bryson advanced, and I presented this order, and told him I had called to collect the money on it; he looked at it closely, and looked at me, and finally said: "This order is good; I recognize the handwriting; the money is here, and we will pay it, but we prefer paying it through some known party." I then told him that I had called to notify them that this amount of that indebtedness had been transferred to me, and they accepted the notice, and agreed to hold the money subject to my order on that paper through some known party. I was in the bank probably an hour or half an hour; I don't recollect the exact time, but at all events it was between two

and three o'clock when I got through talking with them, and just as I was going out Mr. Parker, the cashier, said: "Be good enough to let me see that check again"; I handed him the paper, and he placed it before him, and made a copy of it, and, as he handed it back to me,
73 he said it was all right; that they would pay it on presentation through some known party. I then went out, and went to John Wheaton's, on West street, in this city; I handed the order to him, and asked him to go to the bank and collect it and hold the money subject to my call; he said it was late in the day then, but he would go to-morrow morning. I told him that would do; that they agreed to pay it, and there was no difficulty about it; that all there was to do to take it there and get the money; the next morning, about twelve o'clock, I went to his store, and he handed back the check, and said he had presented it, and the people at the bank said the money had been confiscated. I received the order from him, and went around and called on a friend to go with me and witness what was said. I went up and presented mysely to Mr. Bryson, the president, again.

Q. Who was the friend?

A. Mr. Wilson. I said to him: "Mr. Bryson, how is this? I presented this paper to you yesterday and you agreed to pay it if it was presented through some known party. To-day that party has been here, and he has been refused. He said: "The money has since been attached by the government." I said: "What has the government got to do with my money?" He said: "They have not attached it as your money; they have attached it as the money of the Bank of Georgetown." I said: "This $10,000 belongs to me; yesterday you agreed to hold it for me, and the government has nothing to do with my money." He said: "You go to the district attorney, and if he consents, we will pay it." I went to the district attorney, and he said: "This money belongs to the government. The Bank of Georgetown had no right to draw such a check as that"; and that is all I could get out of them. I then went back to the bank and had a further talk with Mr. Bryson, the president; that was on Wednesday, and I called in the bank Thursday, Friday, and Saturday probably half a dozen times, and went to the president about it, but I found I could get nothing out of them about it, and so the matter hung.

74 Q. Then you had this check protested, did you not?

A. I then took it to the Chemical Bank and asked them to present it and have it legally protested; they did so.

(Plaintiff's counsel offered in evidence Exhibit A; admitted.)

It is as follows:

EXHIBIT A.

$10,000.] [No. 3255.

BANK OF GEORGETOWN, S. C.,
Georgetown, May 20, 1861.

Pay to the order of David Risley ten thousand dollars.

J. G. HENNING,
Prest.

To PHENIX BANK,
New York.

(Endorsed:)
Pay to the order of D. J. Seeley.

DAVID RISLEY.

Pay to the order of David Risley.

D. J. SEELEY.
DAVID RISLEY.

$10,000.] [No. 3256

BANK OF GEORGETOWN, S. C.,
Georgetown, May 20, 1861.

Pay to the order of David Risley ten thousand dollars.
To Phenix Bank, New York.

J. G. HENNING,
Prest.

Pay to the order of D. J. Seeley.

DAVID RISLEY.

Pay to the order of David Risley.

D. J. SEELEY.
DAVID RISLEY.

75 UNITED STATES OF AMERICA,
State of New York, ss:

On the 10th day of January, in the year of our Lord one thousand eight hundred and sixty-five, at the request of the Chemical Bank, I, Harman C. Tallman, a notary public, duly admitted and sworn, dwelling in the city of New York, did present the original bank check (hereunto annexed) at the counter of the Phenix Bank, to the paying teller thereof, and demanded payment, which was refused.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer and endorser of the said check as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interests already incurred, or to be hereafter incurred, for the want of payment of the said check. Thus done and protested in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veretatis,

[L. S.] H. C. TALLMAN,
Notary Public for the Chemical Bank, and Attorney at Law.

[25-cent internal-revenue stamp.]

UNITED STATES OF AMERICA,
State of New York, ss:

I, Harman C. Tallman, notary public, duly admitted and sworn, dwelling in the city of New York, do hereby certify that on the day of , 186 , notice of the protest of the before mentioned note, and that the holders look to for the payment thereof, was served by me upon .

76 STATE OF NEW YORK,
City and County of New York, ss:

I, William C. Conner, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that H. C. Tallman, by whom the annexed certificate was signed, was at the time of signing the same a notary public for said city and county, duly appointed and sworn, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 26th day of May, 1865.

[L. S.] WM. C. CONNER,
Clerk.

[5 cent. int. rev. stamp, May 26, '65.]

The WITNESS. There was no one in New York knew I had that paper except Peter M. Bryson and Mr. Parker, his cashier, until I gave it to Mr. Wheaton. I had not spoken to another living soul on the subject. There was no one in the room except Mr. Bryson and his cashier.

Q. Did you afterwards on that day mention it to any other parties except these officers of the bank and Mr. Wheaton?

A. No, sir.

Q. So that, so far as you are concerned, no one here knew about the matter except those gentlemen?

A. No one.

Q. Nothing has ever been paid on this check to you?

A. Not a cent.

Q. When was this last indorsement put on?

A. That last indorsement was put on the day I presented it.

Q. Have you computed the interest due on this matter?

A. I have.

Q. State it.

A. $19,111.64.

Q. Of which how much is principal?

A. $10,000 principal; interest, $9,111.64.

Cross-examined by Mr. VAN WINKLE, defendant's counsel:

Q. On what basis did you compute it?

A. From January 4th, 1865, the day it was presented to the
77 bank; I counted it at seven per cent. per annum.

Q. What did you take as the principal?

A. $10,000.

Q. The fact of the check?

A. The face of the order.

Q. When did you first go to Georgetown, S. C.?

A. 1854.

Q. You have lived there ever since?

A. Yes, sir; with the exception of a short interval of about a year or so in 1858 I was away from there.

Q. After the declaration of war, were you at all absent from Georgetown?

A. I was still residing there, but I was absent at times.

Q. State how many times you were absent during the war from Georgetown, and where you went.

A. That would be impossible.

Q. Can you state what time you were absent from Georgetown during the continuance of the war, and where you went, and how you went?

A. From January, 1861, to September, 1861, I was in Georgetown; from September, 1861, to March, 1862, I was imprisoned as a Unionist in Georgetown; from March, 1862, until about September, 1862, I was in Georgetown still; from September, 1862, or probably October, until February, 1863, I was part of the time in Richmond and part of the time in Maryland; in February, 1863, I was in Georgetown again; from March, 1863, until September, 1864, I think I was out of the Confederacy, part of the time in the West Indies——

Q. English Islands?

A. Yes, sir; and from September, 1863, to September, 1864, I was in Georgetown; from September, 1864, until I arrived in New York, I was in the West Indies, or in the English Windward Islands, and in the British Provinces.

Q. And all the time you held this check?
A. All the time I held that check.
Q. Have you been examined in this controversy before this?
A. I have.
Q. How often?
A. Before a commissioner.
Q. How often?
A. Twice, I think.
Q. On how many different trials have you been examined?
A. No others.
Q. Two times?
A. No, sir; twice before a commissioner. I was really examined only once. They commenced the examination before the referee, and didn't finish it, and finished it a day or two afterwards, or a week afterwards.

78 Q. Then you were examined on the *the* first trial of this case in court, were you not?

A. No, sir.
Q. What business transactions did you have with the Bank of Georgetown prior to the 20th of May, 1861?
A. I did a large business with them from 1854 to 1861, discounting bills of exchange and drafts, and they loaned me a considerable amount of money.
Q. Up to 1861?
A. Up to 1858.
Q. Between 1858 and the 20th of May, 1861, what transactions did you have with the bank?
A. I had considerable transactions with them then.
Q. In what way?
A. I owed them a considerable amount, and was paying them and borrowing money from them from 1859 to 1861.
Q. Up to May, 1861?
A. Yes, sir.
Q. Now tell me what happened on the 20th May, 1861, between you and the Bank of Georgetown?
A. I paid to the Bank of Georgetown some money in 1861.
Q. Some money that you owed them?
A. Yes, sir.
Q. On the 20th of May, what occurred then?
A. I bought this check of them.
Q. Tell me what happened.
A. James G. Henning, the president of the bank, proposed to sell me a claim against the Phenix Bank of New York.
Q. What did he say?
A. He said: "Mr. Risley, the Phenix Bank of New York owe us about $18,000"—those were his words—"and we are afraid we will lose it; we would like to sell it to you;" and I said to him, "What will you take for it?" or I believe I made him an offer of fifty cents on the dollar—I cannot recollect the exact words—which he refused; and then I said to him, "If you will divide it, and transfer me $10,000 of it, I will take that much of it at your price."
Q. Fifty cents?
A. No; payable in Southern bank bills.
Q. How much?
A. Dollar for dollar.
Q. Didn't you say just now that you purchased it at fifty cents?

A. No, sir; I offered that, and they would not take it.
Q. And you gave him dollar for dollar?
A. Dollar for dollar.
Q. What did you pay him in?
A. Southern bank bills.
Q. Where did you get them?
A. I bought them in Baltimore.
Q. How long had you had them on this day, the 20th of May?
79 A. I think that it was in February, 1861, that I went to Baltimore and bought all the Southern bank bills there were there at some discount. I think it was sixty-five cents I paid for them. I bought out all the brokers' offices there were there.
Q. When you went to the bank on the 20th of May, 1861, did you have those bills in your pocket?
A. I had.
Q. Did you carry them about you all the time?
A. No; I went there to make a payment, and took this money with me.
Q. Did you make the payment?
A. Yes, sir.
Q. Had you money left?
A. Yes, sir.
Q. How much?
A. I had with me about $40,000.
Q. How much did you pay?
A. I paid about $10,000.
Q. You carried the rest about you?
A. I took it home with me.
Q. You took it with you there?
A. Yes, sir.
Q. Did you know before you went there how much you were going to pay?
A. Yes, sir; I was not positive as to the amount I should pay, because I owed them twenty thousand odd dollars, and paid them $10,000 on account of my indebtedness.
Q. What happened then?
A. I have stated it.
Q. I wish you would state it again.
A. Nothing happened then. Mr. Henning drew the order.
Q. All at the same time?
A. Yes, sir; the same day.
Q. Did he give you the order?
A. He did, and I brought it away with me.
Q. That day?
A. That day.
Q. Do you remember of swearing before the referee on the trial that you didn't take that order until some time in August, 1873?
A. I don't think so.
(Defendant's counsel read from the stenographer's notes of the testimony of the plaintiff taken before the referee as follows:)
"Q. When did you get the draft itself?
"A. I got the draft in August, 1863.
Witness said:
"A. Those dates there are erroneous; I spoke of having sent the draft away, and I think you asked me when I got it back again, and I said in August, 1863."

Defendant's counsel further read:

"Q. When did you get the draft itself?

"A. I got the draft in August, 1863."

Mr. RISLEY. There is something preceding that.

Counsel further read:

"Q. State when you purchased and received the draft.

80 "A. I virtually purchased it in May, 1861.

"Q. Why didn't you then get it and go North?

"A. Because I couldn't leave there.

"Q. You say you couldn't leave; why?

"A. Well, the authorities wouldn't allow me to leave.

"Q. When did you first get the opportunity to leave there?

"A. I left there in 1863, I think it was.

"Q. When you say "there" you mean Georgetown, S. C.?

"A. Yes, sir.

"Q. When did you get the draft itself?

"A. I got this draft in August, 1863."

Q. Now what do you say to that?

A. I say it is a mistake.

Q. When did you get it?

A. I say I got it in May, 1861.

Q. You bargained for it?

A. I bought it.

Q. You got it?

A. Yes, sir.

Q. What did you mean by saying you didn't get it until August, 1863?

A. I attempted to send the draft there for collection, and I didn't get it back again until 1863.

Q. There was nothing of that kind stated at the time?

A. I have looked over that testimony, and I know it is very incorrect in its dates.

Defendant's counsel read:

"Q. You got the draft; where did you go when you left there?

"A. I went to the West Indies when I got the draft."

Q. Now please state the date of your journey to the West Indies.

A. September, 1863.

Q. You didn't leave in May, or June, or July, or August?

A. No, sir; but I had been to the West Indies before that.

Q. I want to know when, after you got the draft, you went there, and you say in September, 1863; have you read the opinion of Judge Brady on this case?

A. I think so.

Q. Where was it read to you?

A. I read it.

Q. Did you read the opinion of Judge Brady?

A. Yes, sir.

Q. Is that all that occurred between you and the president of the bank?

A. All that I recollect; there was considerable conversation between us, but I cannot exactly quote it to you now.

Q. Is that all you can recollect?

A. Yes, sir.

Q. Let me see if I understand you; you state that you went there on other business, carrying $40,000 in Southern bank bills in your pocket; that you paid them on account of the debt you owed them about $10,000,

and that Mr. Henning, the president, told you he had a claim on
81 the Phenix Bank in New York, and he offered to sell it to you for fifty cents on the dollar?

A. I didn't say I carried that amount of money in my pocket, but I had that amount of money in a package in my hands.

Q. What did he say?

A. He said, "Mr. Risley, the Phenix Bank of New York owe us a claim of about $18,000, and we are afraid we will lose it; we would like to sell it; don't you want to buy it?"

Q. Did he say why he was afraid they would lose it?

A. Yes, sir; he was afraid the Phenix Bank would fail before the war was over; he thought the thing was going the other way at that time; there was a talk at that time of renting Broadway for a cow pasturage.

Q. That was the general opinion there, was it?

A. Yes, sir.

Q. And you were willing to buy a claim on the cow pasture?

A. My faith was the other way; I believed things would not go as they thought they would.

Q. Did you receive that check from the bank on the 20th of May, 1861, or in August, 1863?

A. The 20th of May, 1861.

Q. What did you do with it?

A. I kept it with me for some time; I kept it among my papers for a long time, and finally I endorsed it to D. J. Seeley, and made an attempt to send it to St. Johns, New Brunswick, to have it collected, but I failed to get it through the lines, and afterwards it was returned to me.

Q. Who is Mr. Seeley?

A. A merchant in New Brunswick; I endorsed it payable to his order.

Q. He endorsed it back?

A. In January, 1864, I sailed from St. Johns, Antigua, for St. Johns, New Brunswick; I then went to Mr. Seeley and asked him to re-endorse the check to me, so that I didn't want to have it obliterated in any way.

Q. You had not parted with it?

A. I had not parted with it; it was with me all the time.

Q. You came to New York, and after going to the provost marshal you went to the Phenix Bank?

A. And presented the check—the paper?

Q. And you saw Mr. Bryson, the president, and Mr. Parker, the cashier; you afterwards found out they were the gentlemen?

A. As I entered the gate leading into the private office, a gen-
82 tleman stepped up and met me and I handed him this order; that gentleman is Peter M. Bryson.

By Mr. BEEBE:

Q. Is he here in court?

A. No, sir; I don't see him.

By Mr. VAN WINKLE:

Q. What did you say to Peter M. Bryson?

A. I said: "Here is a claim that was transferred to me by the Bank of Georgetown, against your bank."

Q. Are these the words you used?

A. I think so.

Q. Is that what you testified to before?

A. I might have used the word "claim;" I might have used the word "check;" I am not positive.

Q. You are not positive which you did use?

A. No, sir.

Q. You said, "Here I have a check on your bank from the Bank of Georgetown?"

A. Yes, sir.

Q. Are you sure you said anything more than that?

A. Yes, sir.

Q. What else?

A. I am positive that I then told him the Bank of Georgetown had transferred to me that much of their claim against this Phenix Bank.

Q. By this check?

By this check or order, and Mr. Bryson said in reply, "The paper is good; the check is good; I recognized the hand-writing; the money is here, and has been here for four years, and we will pay it;" I asked him if the Government had attached it, or meddled with it in any shape whatever, and he said no.

Q. That was the first day?

A. Yes, sir.

Q. You asked him that?

A. I asked him that particularly.

Q. You are positive about that?

A. I am positive.

Q. And he told you they had not?

A. He told me they had not.

Q. Did you testify as to any of that conversation on your first examination?

A. Probably not.

Q. Why not?

A. Because it was not asked me.

Q. You were asked what you did when you went to the bank, by your own counsel; you went to the Phenix Bank, you say, and you said you presented the check; that was your answer then.

Defendant's counsel read from testimony before referee:

83 "Q. You went there for the purpose of presenting a check or draft?

"A. Yes, sir.

"Q. What became of that original draft? Did you have a draft that time?

"A. I had a check drawn by the Bank of Georgetown on the Phenix Bank of New York.

"Q. You did have a check at that time?

"A. Yes, sir.

"Q. What day was that?

"A. 4th of January, 1865.

"Q. What has become of that check or draft?

"A. It was deposited with the petition in the office of the Secretary of the Treasury at Washington.

"Q. What became of that, do you know?

"A. Neither of them have been returned.

"Q. Have you applied for them?

"A. I have.

"Q. Have you caused any inquiry then to be made for them?

"A. Yes, sir.

"Q. Or examinations for them?

"A. Yes, sir.

"REFEREE. Whom did you give it to?

"A. I presented it to ex-Governor Ford, and it went to the Secretary of the Treasury."

A. I will state that I was under a misapprehension in reference to that matter and corrected it the next day.

Q. That is what you swore to on the first day?

A. Those were my answers on the first day, but when I came to correct it I stated it correctly before I got through.

Q. Was your memory feeble on the subject of this large check?

A. I had been here, probably, ten or fifteen, or twenty times or more to collect that check, and my memory was erroneous as to what I had done with it—where I left it.

Q. And afterwards you swore it was destroyed, didn't you?

A. I thought I deposited it with the government.

Q. Didn't you swear that afterwards?

A. Yes, sir.

Q. Did you take the paper to Washington?

A. Yes, sir.

Q. For what purpose?

A. Your president told me to go to the district attorney, and, if he would consent, that the president of the bank would pay the claim; getting no answer from the district attorney that satisfied me, I went to the powers that made him, to ask them to order the attachment released, and the money returned to the bank.

Q. You went to Washington, and took the check and petition; what did you do with the check when you got it there?

A. I kept it with me in my baggage.

Q. Didn't you present it.

84 A. No, sir; I presented a copy of it. I got the copy back.

Q. Did you present it at all?

A. I presented a copy of it appended to the petition.

Q. And you kept the original?

A. I kept the original.

Q. Where did you keep the original?

A. In my baggage among my papers.

Q. You think you were mistaken the first day you swore?

A. I know I was.

Q. Were you much accustomed to handling large checks of this amount? Did you have a good many of them at this time?

A. I did a business to the amount of about $500,000 a year previous and since.

Q. On your former examination you stated that about two o'clock, on the 4th of January, 1865, you went to the Phenix Bank; you were asked, "What did you do there?"

A. On the 4th of January, 1865, I went to the Phenix Bank of New York, and asked for the cashier, and presented that check to the cashier of the Phenix Bank, and asked him if it was good.

Q. Where was he when you presented it to him?

A. It was in the cashier's private office.

Q. What did he say to you?

A. He said the check was good, that the money was there, and he would pay it. I claimed the amount in gold. He contended he would not pay it in gold, but would pay it in currency. He said, "I prefer that you should present it through some known party."

Q. Do you recollect swearing to that?

A. I think so.

REFEREE. The draft was drawn to your order?

A. Yes, sir; and endorsed by me.

Q. Was it endorsed by you then?

A. Yes, sir; I told him I would have it sent to him next morning, through bank, so that he would run no risk in paying it. He recognized the signature, and admitted it to be genuine. He said that he was satisfied that it was all right, he knew the handwriting, but he preferred to pay it through some known party. After talking with him for some time, and as I was about to leave the bank, he asked me to hand him the check again—that is after he had returned it to me—he made a copy of it. After having done so, I said to him, "If I identify myself you pay the check." He said he would. That is not all the conversation that took place there.

85 Q. Was there any other conversation at that time than that?

A. No, sir.

Q. You didn't say anything on your previous examination about your having purchased this claim, did you?

A. I don't know that I was asked those questions.

Q. You were asked what you did?

A. In the bank?

Q. What you did when you went to the bank?

A. Yes, sir; but the whole conversation between Mr. Bryson and myself is not stated there; the party with whom I did the talking was Mr. Bryson, and not Mr. Parker, the cashier.

Q. They were both there?

A. They were both there. Mr. Parker was standing at the desk writing, and Mr. Bryson asked me to take a seat on the sofa in the back part of the office.

Q. Do you see Mr. Bryson in court now?

A. I do.

Q. This all happened on the 4th of January, didn't it?

A. On Wednesday, the 4th of January, 1865, between the hours of twelve and two.

Q. When next did you see any officers of the bank?

A. The next day, between twelve and one o'clock, I saw the president.

Q. At the bank?

A. At the bank.

Q. Will you state what occurred then?

A. Yes, sir.

Q. Were you alone?

A. No, sir; I had a witness with me.

Q. Who was the witness?

A. Henry N. Wilson.

Q. What occurred then?

A. I went to the president and presented that order, and said, "How is this; yesterday you agreed to pay this paper if I sent it in through the hands of some known party, so that you would suffer no risk in paying it; to-day that party has been here and you refused to pay it." He said, "Since the money has been attached by the Government of the United States." I said, "What has the Government to do with my money?" He said, "They have not attached it as your money; they have attached it as money belonging to the Bank of Georgetown." I said, "This $10,000 is mine; yesterday you agreed to hold it for me, and the government has got nothing to do with it." He said, "You go

and see the district attorney, and if he consents we will pay it," and I left.

Q. When was this?

A. This was on Thursday, the 5th of January, 1865.

86 Q. When next did you see any officers of the bank?

A. That day again, I think.

Q. Who did you see then?

A. I think I saw the president then.

Q. What happened then?

A. He huffed me off to get clear of me. He would not give me any satisfaction at all, and the next day I called again, and the day after.

Q. What did he say the second time you called on him?

A. He said, "We cannot pay it now."

Q. Did he give a reason?

A. No further reason.

Q. Than the government had taken it?

A. He said the government had attached it.

Q. When did you see them again?

A. I tell you I saw them every day that week, and probably the following Monday.

Q. Who did you see?

A. The president all the time, Peter M. Bryson.

Q. Did you apply to the district attorney's office?

A. Yes, sir; on the 5th of January, and no other time.

Q. What did they tell you?

A. He said, "Oh! this money belongs to the Government of the United States; the Bank of Georgetown had no right to draw such a check." That was his language.

Q. The president told you to go to the district attorney's?

A. Yes, sir.

Q. Did you see the president of the bank again?

A. I think I saw him on Monday or Tuesday of the following week. I don't recollect.

Q. How often did you see him?

A. I saw him on the day of the date of the protest. I have been there to see him several times.

Q. When did you go to Washington?

A. The following week.

Q. That would have been about the fifteenth?

A. Somewhere about.

Q. When did you return from Washington?

A. It required just time enough for me to get an answer from there, for them to have the money confiscated in New York, during my absence. I got an answer as soon as this decree was made, and not before. Before I knew anything about it the money was confiscated.

Q. When was it confiscated?

A. On January twenty-fourth.

Q. All this time you were in Washington?

A. Yes, sir; waiting for an answer from the Solicitor of the Treasury, which answer I got about the first of February.

Q. When did you return to New York?

87 A. As soon as I got his answer; then again I called on your president.

Q. When was that?

A. Some time in February and demanded the money, and he said: "We owe you nothing." That was his reply.

Q. What did you say to him?
A. I said I would collect it out of him—out of his bank.
Q. And you threatened to assassinate him?
A. No, sir; I told him I would collect it out of his bank; I was very much exasperated, and told him I would collect it out of him or out of his bank.
Q. Didn't you make such a threat?
A. I wanted to be well satisfied whether Mr. Bryson was in collusion with parties to steal this money or not, and if he was, then I intended to take it out of him.
Q. Didn't you threaten to take his life?
A. No, sir.
Q. Didn't you write to that effect?
A. No, sir; I may have written, and may have said that Mr. Bryson and I must settle this matter between us; it was he who had my money in his custody, and it was he who colluded to take it from me, and it was a matter between me and him; but first and foremost I would exhaust every resource at law.
Q. You think you said that?
A. That is what I said.
Q. You think you didn't make such a threat?
A. I said just what I have quoted.
Q. You have now stated all that occurred at these interviews?
A. As far as I recollect.
Q. And you think your present version is the correct one?
A. I could not state all that was said between Mr. Bryson and myself in the bank, because Mr. Bryson asked me to take a seat there, and asked me a number of questions about the condition of the banks in South Carolina and in the South generally, and a long talk took place between us relative to their condition.

By the COURT:

Q. You have stated everything in relation to this $10,000 matter that you recollect?
A. Yes, sir.

Redirect examination by Mr. BEEBE:

Q. You say there were certain periods of time that you were in prison in Georgetown?
A. Yes, sir.
88 Q. What was that for?
A. I was opposed to the war in 1861; I took a very active part against it.
Q. You claimed to be a loyal citizen of the United States?
A. Yes, sir.
Q. And for that they put you in prison?
A. Yes, sir.
Q. The first time how long did they keep you there?
A. The first time six months.
Q. At various times from the breaking out of the war or rebellion, which ever you may please to put it, depending on the part we are representing, did you to try to get North?
A. Yes, sir; I came North once or twice.
Q. As far as Maryland?
A. Yes, sir.
Q. Had you any especial desire to remain South?

A. I was compelled to remain there; I had a large amount of property there, and it was ruinous for me to leave there.

Q. What was your business there?

A. I was engaged in sawing and shipping lumber as proprietor of the Palmetto Mills.

Q. How many feet a year?

A. About ten million feet a year.

Q. And your interests were all there?

A. Yes, sir.

Q. Whereabout were you born?

A. In New Jersey.

Q. Had you been a resident of the North until you went there in 1854?

A. Yes, sir.

Q. No one ever charged you with disloyalty?

A. No, sir.

Q. Had you any hesitation about taking the oath of allegiance when you got North?

A. None whatever; I was perfectly willing to take the oath of allegiance as soon as the government could exercise its protection over my property; it was unsafe for me do it before that.

Q. If you had done that?

A. Then I would have come up the loser on the other side.

Q. You would have been worse than Libby?

A. Yes, sir.

Q. Is there any doubt about the fact that you paid the $10,000 for this check?

A. Not the slightest in the world.

By Mr. VAN WINKLE:

Q. You got the check at the time you paid it?

The COURT. He has sworn so three or four times.

(Plaintiff rested.)

89 Defendant's counsel moved to dismiss the complaint as follows: The plaintiff having rested his case, the defendant now moves to dismiss the amended complaint and for a non-suit, as to the first and second cause of action therein alleged: 1st. On the ground that the plaintiff has not shown that he has any transfer of the money mentioned in either of said causes of action. 2d. On the ground that he has not shown any claim upon the defendant in respect to the moneys mentioned in those two causes of action, except through the check therein set forth. 3d. On the ground that he has not claimed or shown that he ever had any acceptance by the defendant of said check in writing, nor any written promise of defendant to pay said check, and because a check is the same as a bill of exchange, and subject to the same rules, and the defendant cannot be held upon said check, because it has never been accepted in writing, the law requiring the acceptance of a check to be in writing before the bank on which it is drawn can be held upon it. 4th. On the ground that no cause of action, upon or growing out of the said check, against the defendant, has been shown, as the defendant did not accept or certify the said check in writing. 5th. On the ground that no oral promise or promise not in writing, by the defendant to pay said check was binding upon the defendant. 6th. On the ground that the drawing and delivering of said check by the Bank of Georgetown to the plaintiff, while they were both residents and inhabitants of the State of South Carolina, and while the inhabitants of that State were in a state of in-

surrection against the United States of America, was null and void. And the defendant moves to dismiss the amended complaint, and for a non-suit to the third cause of action therein alleged: 1st. On the ground that the plaintiff has shown that said check was inseparably connected with the alleged sale and assignment mentioned in said third cause of action, and that his whole claim rests solely upon the drawing and delivery of the said check. 2d. On the ground that the testimony
90 of the plaintiff does not establish the alleged sale and assignment, but only shows a simple bargaining for and purchase of the said check. 3d. On the ground that the plaintiff has not shown that he did accept and receive on 20th May, 1861, or at any other time, the evidences or some of them of the said claim (such as the accounts and letters from the defendant to the Bank of Georgetown), independently of and over and above said check. 4th. On the ground that the plaintiff has not shown that on the 20th May, 1861, or any other time, he paid any part of the purchase money for said claim, the proof simply showing that with one hand the plaintiff received the said check, and with the other hand paid the money therefor. 5th. On the ground that the selling or assigning of said claim by the Bank of Georgetown to the plaintiff, while they were both residents and inhabitants of the State of South Carolina, and while the inhabitants of that State were in a state of insurrection against the United States of America, was null and void. And the defendant moves to dismiss the amended complaint, and for a non-suit on all said grounds, and also on the further ground that no cause of action against the defendant has been proved.

Motion denied; defendant excepted.

Adjourned to Monday, January 14th, 1878, at half-past ten o'clock.

JANUARY 14TH, 1878.

Mr. VAN WINKLE, defendant's counsel: I ask that Mr. Risley be recalled for a little further cross-examination in reference to facts I have learned since the adjournment——

The COURT. I shall not allow it at present. It is possible I may at a later stage of the case. It depends on how the testimony develops.

91 JOHN PARKER, a witness called on behalf of defendant, being duly sworn, testifies.

Examined by Mr. CANDLER, defendant's counsel:

Q. Are you the cashier of the Phenix Bank of the City of New York?

A. Yes, sir.

Q. And that bank was formerly the Phenix Bank sued as the defendant in this action, was it not?

A. Yes, sir.

Q. How long have you been associated with that bank?

A. Forty years.

Q. In different positions in the bank?

A. Yes, sir.

Q. How long have you been the cashier?

A. About 15 years, I think it is.

Q. Have you heard the testimony given by Mr. Risley, in part, and read all of it, on this trial?

A. I have.

Q. Will you be kind enough to state what, if anything, took place between you and Mr. Risley, in the Phenix Bank, on the 4th of January, 1865?

A. Mr. Risley called in in the latter part of the afternoon.

Q. About what time?

A. I should think between two and three o'clock, quite late in the afternoon, and presented a check, asking me if it was good and would be paid; I took it, looked at it, and went to the bookkeeper, and found that the check was good for the amount, and came back and told him that it was good, and would be paid if he identified himself, or got it passed through the Exchange, deposited by some friend or acquaintance of his in some other bank.

Q. What did he say to that?

A. He said he would do so?

Q. What further took place between you, if anything, at that time?

A. Nothing further at that time.

Q. He then left, and said he would do as you suggested?

A. Yes, sir.

By the COURT:

Q. Nothing further on that day?

A. Nothing further on that day.

By Mr. CANDLER, defendant's counsel:

Q. Was Mr. Bryson, the president of the bank, present at that time?

A. No, sir; he was not present.

92 Q. What further, if anything, did you do in regard to this matter, on that day?

(Objected to as irrelevant. Objection sustained. Defendant excepted.)

Q. What did you do in regard to the matter, if anything, on that day?

The COURT. I will exclude it on my own motion. I don't think it has got anything to do with the question the jury has got to pass upon at all.

(Defendant excepted.)

Q. When did you next see Mr. Risley?

The COURT. Of course it is understood, in the exclusion of this question, that what he did was not in connection with Mr. Risley, in regard to this matter.

Mr. CANDLER. I propose to prove that the stock of the Phenix Bank belonging to the Southerners having been previously confiscated by the government, and the cashier, being in doubt in regard to his duty in respect to this check, applied to John A. Stewart, assistant treasurer of the United States, to ascertain whether it would be proper to pay this check; whether the government would sanction the payment of this check. And he also, by direction of the assistant treasurer, went to the district attorney's office and made the same inquiries, and that he was then instructed by the assistant treasurer and the district attorney not to pay this money; that the government claimed it.

The COURT. I shall exclude it.

Mr. CANDLER. We except.

Mr. BEEBE. We consent that it be put in.

The COURT. I will exclude it.

(Defendant excepted.)

Q. Please state when next you saw Mr. Risley in regard to this check, and where.

A. The next day.

Q. At the bank?

A. At the bank.

Q. What time?
A. I could not say what time—in the course of the day.
Q. He stated between 12 and 1 o'clock; was that about the time?
A. It might have been.

Q. State what took place, if anything, in regard to the money
93 on deposit in the Phenix Bank, early on the morning of the 5th of January, 1865.

(Objected to; objection sustained; defendant excepted.)

Q. Will you be kind enough to state whether any person applied to the bank, on behalf of Mr. Risley, in regard to this check, on the morning of the 5th of January, 1865; and, if so, who?
A. Mr. Wheaton called in to see Mr. Bishop, our corresponding clerk, who was an acquaintance of his.
Q. Did he, or not, represent himself as coming from David Risley, on that occasion?
(Objected to as leading and immaterial; objection sustained; defendant excepted.)
Q. What occurred on the morning of the 5th of January, 1865, between you and any one representing Mr. Risley?
(Objected to; objection sustained; defendant excepted.)
Q. Did Mr. Wheaton appear on the morning of the 5th of January, 1865, at the bank with the check in suit?
A. Yes, sir.
Q. Be kind enough to state what took place on that occasion with reference to the payment of that check?
A. Mr. Bishop came to me with the check, stating that he had been called upon by Mr. Wheaton, who was standing there, to know whether the check was good and all right before he would deposit it, having been requested to do so by Mr. Risley; I answered that the funds had been seized; tell Mr. Wheaton that the funds had been seized.
Q. What did Mr. Wheaton do?
A. I don't know what he did.
Q. He went out with check?
A. I suppose so; I don't know; I merely told Mr. Bishop to return it.
Q. After that, had you a conversation with Mr. Risley in the bank on the same day?
A. Yes, sir.
Q. State what took place.
A. Mr. Risley came in and expressed his surprise that after my having promised to pay the check when he was identified, and he having sent the person for that purpose, that I should have refused payment of it.

Q. What did you say?
94 A. I answered that the funds had been seized, and if he wished any redress in that matter he had better go to the district attorney, and if the district attorney released the funds I would pay him.

Q. Before Mr. Risley came into the bank on the 5th of January, 1865, had you been served with any paper by the United States marshal?
A. Yes, sir.
Q. (Handing paper to witness.) Look at this paper and see if this was the one, and state when it was served.
(Objected to; objection overruled.)

By Mr. BEEBE, plaintiff's counsel:

Q. Is that the paper itself or a copy of it?
A. That is the original paper.

By Mr. CANDLER, defendant's counsel:

Q. State when that paper was served upon you.

A. 11.50.

Q. On the morning of the 5th of January, 1865?

A. Yes, sir.

(Paper shown witness, marked by the court Exhibit No. 1, for identification, January 14th, 1878, C. H. V. B.)

Q. Is that your memorandum on the back of it?

A. Yes, sir.

Q. Had the marshal previous to that seized this property early in the morning?

A. Yes, sir.

Q. How much money was there to the credit of the Bank of Georgetown on the 4th of January, 1865, when Mr. Risley called upon you in the afternoon?

A. $12,117.38.

Q. How long did that money remain on deposit?

A. Until the 25th of January of the same year.

Q. What became of it then?

A. It was then taken by the marshal upon his receipt and the paper served.

(Handing paper to witness.) Be kind enough to look at the paper now shown you, and state when you received that and from whom.

A. The 25th of January, 1865.

(Paper shown witness, marked Exhibit No. 2, for identification, January 14th, 1878, C. H. V. B.)

Mr. BEEBE, plaintiff's counsel. Let us see for a moment; my idea about this is just this: these are all of them purely questions
95 ot law, which the court will be asked to pass upon, and, therefore, the importance of their bearing on the jury is not as great as it would be if it was a mere question of fact, and I only desire to save the point by raising the objection.

The COURT. I don't see, as far as the decision of the general term goes, what effect any of those papers has upon the question; it is immaterial, as far as this action is concerned, whether the funds were seized in the bank or not; if all his rights are based on the check he has no right to recover. (Handing paper to witness.) State whether or not that is the receipt you took from the marshal at the time you paid over that money.

A Yes, sir; that is the receipt.

(Paper shown witness marked for identification, Exhibit No. 3, January 14th, 1878, C. H. V. B.)

Has the Phenix Bank ever had in its possession any money belonging to the Bank of Georgetown since the 4th of January, 1865, except the $12,117.38 which were on deposit to its credit on that day, and which were paid over to the marshal on the 25th of January, 1865?

A. No, sir.

Q. State whether or not the Phenix Bank had, from time to time, prior to the 20th May, 1861, rendered accounts current to the Bank of Georgetown, showing the indebtedness of the Phenix Bank to that bank.

A. Yes, sir.

Q. No doubt about that?

A. No, sir.

Q. Have you stated all that took place between you and Mr. Risley on the 4th and 5th of January, 1865?

A. Yes, sir; I did. Mr. Risley testified, referring to the 4th of January, 1865, as follows: "As I entered that room I saw two men there, who I afterwards learned to be Mr. Peter M. Bryson, the president, and J. Parker, the cashier. Mr. Bryson advanced and I presented this order, and told him I had called to collect the money on it. He looked at it closely, and looked at me, and finally said, 'this order is good, I recognize the handwriting; the money is here and we will pay it, but we prefer paying it through some known party.' I then told him I had called to notify them that this amount of that indebtedness
96 had been transferred to me, and they accepted the notice, and agreed to hold the money subject to my order on that paper, through some known party. I was in the bank probably an hour, or half an hour; I don't recollect the exact time, but at all events it was between two and three o'clock when I got through talking with them, and just as I was going out Mr. Parker, the cashier, said, 'Be good enough to let me see that check again.' I handed him the paper and he placed it before him, and made a copy of it, and as he handed it back to me he said it was all right, that they would pay it on presentation through some known party."

Q. Did anything of that kind occur at that time?

A. No, sir.

Q. Did you make a copy of the check at that time?

A. No, sir.

Q. Did you or not ask permission to do so?

A. No, sir.

Q. Was Mr. Bryson present on such occasion, on that day?

A. No, sir; he further says: "Mr. Bryson, how is this; I presented this paper to you yesterday and you agreed to pay it if it was presented through some known party; to-day that party has been here and has been refused." He said, "The money has since been attached by the government." I said, "What has the government to do with my money?" He said, "They have not attached it as your money; they have attached it as the money of the Bank of Georgetown." I said, "This $10,000 belongs to me; yesterday you agreed to hold it for me, and the government has nothing to do with my money." He said, "You go to the district attorney, and if he consents we will pay it." I went to the district attorney, and he said, "This money belongs to the government; the Bank of Georgetown had no right to draw such a check as that," and that was all I could get out of them. I then went back to the bank and had a further talk with Mr. Bryson, the president; that was on Wednesday, and I called in the bank Thursday, Friday, and Saturday, probably half a dozen times, and went to the president about it, but I found I could get nothing out of them about
97 it, and so the matter hung.

Did Mr. Risley have any such conversation with you as that?

A. No, sir.

Q. Did he have any such conversation with you as that which he said he had with Mr. Bryson on that day?

A. No, sir; he further says:

"Q. You said, here I have a check on your bank from the Bank of Georgetown?

"A. Yes, sir.

"Q. Are you sure you said anything more than that?

"A. Yes, sir.

"Q. What else?

"A. I am positive that I then told him the Bank of Georgetown had transferred to me that much of their claim against this Phenix Bank.

"Q. By this check?

"A. By this check or order;" and Mr. Bryson said in reply, "The paper is good; the check is good; I recognize the handwriting; the money is here and has been here for four years, and we will pay it." "I asked him if the government had attached it or meddled with it in any shape whatever;" and he said, "No."

"Q. That was the first day?

"A. Yes, sir.

"Q. You asked him that?

"A. I asked him that particularly.

"Q. You are positive about that?

"A. I am positive.

"Q. And he told you they had not?

"A. He told me they had not."

Did any such conversation as that take place between Mr. Bryson and Mr. Risley?

(Objected to; objection sustained; defendant excepted.)

Q. Was Mr. Bryson there the time this conversation was had, when Mr. Risley came into the bank?

(Objected to.)

Q. Was he there at all during that conversation?

A. No, sir; he was not there, and I heard no such conversation.

Q. The conversation was had wholly with you, and you kept quiet in regard to it?

(Objected to; objection sustained; defendant excepts.)

Q. He further says: "And you think your present version is the correct one?

"A. I could not state all that was said between Mr. Bryson and myself in the bank, because Mr. Bryson asked me to take a seat
98 there, and asked me a number of questions about the conditions of the banks in South Carolina, and in the South generally, and a long talk took place between us in relation to their condition." Did you have any such conversation with Mr. Risley?

A. No, sir.

Q. Please state the custom of drawing moneys from the banks in the city of New York.

(Objected to; objection sustained; defendant excepted.)

Q. Did you ever know of moneys in the bank being transferred by an assignment, such as has been testified to by Mr. Risley in this action?

(Objected to; objection sustained; defendant excepted.)

Q. How large a bundle would $40,000 of bank bills make in small bills?

(Objected to; objection sustained; defendant excepted.)

Q. Could a man conveniently carry $40,000 in $5 bills?

(Objected to; objection sustained; defendant excepted.)

Cross-examined by Mr. BEEBE, plaintiff's counsel:

Q. When did you become cashier of this bank?

A. About the time of the death of Mr. Tileston.

Q. It was the same day that Mr. Tileston died?

A. A few days afterwards.

Q. You had been connected with the bank before that, had you not?

A. Yes, sir; since 1836.

Q. How long had the Georgetown Bank been dealers with your bank?
A. A number of years; I could not say how many.
Q. Anterior to the breaking out of the rebellion?
A. Yes, sir.
Q. And you were their agent here in New York?
A. Yes, sir.
Q. Or their correspondents?
A. Yes, sir.
Q. Where they kept their surplus funds for the city?
A. Yes, sir.
Q. Can you tell me whether on the 4th of May, 1861, you had money to the credit of that bank in your bank?
A. I think there must have been; I could not say positively now; they always had a balance.
99 Q. Subsequent to that period in 1861, after the rebellion had fully broken out, and non-intercourse was declared, did you receive any deposit from that bank, or rather, previous to May, 1861?
A. Previous to May, 1861.
Q. And after May, 1861?
A. Yes, sir; I think we did, although I am not certain about that.
Q. So that whatever balance you had on hand, more or less, you had anterior to the 4th of May, 1861?
A. I am not certain about that.
Q. Have you a recollection that you did receive deposits after that time or remittances?
A. I think not.
Q. Then, if you had $18,000 then, did you pay out any money after that time upon checks or otherwise between 1861 and the presentation of this paper in January, 1865?
A. I think there was.
Q. You did pay out something?
A. Yes, sir.
Q. Do you remember what time that was that you thus paid out any sum upon the check of the Bank of Georgetown?
A. No, sir; I don't remember the date.
Q. Do you remember how long anterior to the 4th of January, 1865, it was that you had paid any check or draft of the Bank of Georgetown?
A. I don't know; I could not tell you that without referring to the books.
Q. Will your books show that?
A. Yes, sir.
Q. Will the account of the Bank of Georgetown at your bank show when you paid moneys last out for the account of that bank anterior to the 4th of January, 1865?
A. Yes, sir.
Q. Had you within the year previous paid anything?
A. I don't remember the date, but there had been payments before.
Q. Do you remember whether it was within the year?
A. No, sir; I don't think it was.
Q. Would your books show when you paid the last?
A. Yes, sir.
Q. Have you anybody in court from your bank that can give us that information pending this trial?
A. Yes, sir.

Q. Do you remember the amount that you had paid out anterior to the 4th of January at any other time?

A. I think I remember one draft of $3,000.

Q. Have you not any idea now as to that time?

A. I think it was the year preceding. I think it was in 1864; what the exact date was I don't know.

100 Q. Within that time?

A. Yes, sir.

Q. That is easily ascertained, is it not?

A. Yes, sir.

Q. Do you know Mr. Edwards Pierrepont?

A. I know him personally.

Q. Do you remember whether you paid it to him or through him?

A. I do not.

Q. Your books will show that?

A. I don't know whether the books will show that or not; the books show the number and the amount.

Q. When you received the money from time to time in the bank from the Georgetown bank, did it go into your general fund and pass to the credit of the Georgetown bank?

A. Yes, sir.

Q. On the 5th day of January were there any distinct funds, separate in kind, in which they were deposited as a special deposit belonging to the Bank of Georgetown?

A. No special account; no, sir.

Q. Was there anything more than a general indebtedness from your bank to the Georgetown Bank on account of money remitted or drafts remitted which had been collected by your bank?

A. No, sir.

Q. It was a debt?

A. Yes, sir.

Q. There was nothing which distinguished the Bank of Georgetown funds from any other bank?

A. No, sir.

Q. On the 5th day of January could you have gone into your bank and picked out any distinct $12,200 that was the property of that Bank of Georgetown as such, anything more than paying out moneys to pay indebtedness?

A. You mean there was no special account?

Q. No special account?

A. No, sir.

Q. And nothing kept there in the way of specie—no particular bills?

A. No, sir.

Q. In other words, it was a mere debt due from your bank to the Bank of Georgetown?

A. Yes, sir; by remittance or collection.

Q. Do you remember how many different individuals, on the 4th of January, 1865, you had conversation with?

A. No, sir.

Q. How many do you probably average within any business season of the year in the course of banking hours?

A. I could not say.

Q. Can you form any approximation?

A. I take more account of figures than of individuals. I am in constant intercourse with parties dealing with the bank and outsiders.

101 Q. Can you form any idea?

A. No, sir.
Q. Would it amount to hundreds?
A. No, sir; I don't think so.
Q. Probably a hundred a day?
A. I don't know.
Q. Can you remember any man you saw outside of the bank—any dealer or any stranger that you had any conversation with on the 4th of January?
A. No, sir.
Q. Can you on the 3d?
A. No, sir.
Q. Can you on the 6th?
A. No, sir; of course not.
Q. Can you on any other day of that winter; and, if so, what day?
A. I suppose I might if I were to call up associations.
Q. Have you any in your mind now?
A. If I was to call up associations of thoughts and ideas I might.
Q. You have none now present with you?
A. No, sir.
Q. Did you make a memorandum of this conversation?
A. No, sir; I did not make a memorandum of it.
Q. How many employees have you immediately connected with you or in that locality?
A. About twenty.
Q. Whereabouts was this conversation which you had with Mr. Risley?
A. At my desk.
Q. Whereabouts is your desk in the bank?
A. In the back part of the banking-room.
Q. How near to that generally occupied by the president?
A. The president's desk is on the other side, a distance, I suppose, of about several yards.
Q. How far?
A. I should think it was about 15 or 20 feet from my desk.
Q. You don't confine yourself to your desk?
A. Most of the time.
Q. You walk frequently, do you not?
A. I walk sometimes, when I get a chance.
Q. It is nothing unusual for you to be walking about?
A. No, sir.
Q. You have communications to make with the clerks?
A. Yes, sir; I don't make a practice of taking exercise often.
Q. Is it by no means certain that you were sitting always at your desk? It is certain you were not, I suppose. Now, when was Mr. Bryson made president?
A. I forget the year he was made president; about the same time I was made cashier.
Q. He took Mr. Tileston's place?
A. Yes, sir.
Q. Mr. Bryson had previously been cashier?
A. Yes, sir.
Q. And on the death of Mr. Tileston he was appointed president, and you took the position of cashier?
102 A. Yes, sir.
Q. On this particular day, can you tell where Mr. Bryson was?
A. No, sir; I cannot.
Q. Can you tell if he had gone out of the bank?

A. If you allow me I will give you the association which makes me——

Q. I am examining you as to answers that I require to the questions I ask.

A. I recollect he was not in the bank.

Q. Do you remember what time he had left the bank?

A. No, sir.

Q. Do you remember the purpose for which he had left it?

A. No, sir.

Q. Had he stated to you that he was going to leave the bank?

A. Not that I know of.

Q. Can you give me any idea of the hour he left?

A. No, sir.

Q. Or of how long he had been absent?

A. No, sir.

Q. Do you remember who brought Mr. Risley to you?

A. Mr. Risley came himself.

Q. Do you know whether he had ever been in the bank before?

A. I never had seen him before.

Q. Do you say he came directly to your desk?

A. That I don't know.

Q. Do you know where you were when he came to you?

A. Yes, sir.

Q. Where?

A. I was sitting at my desk.

Q. Are you sure you were sitting or standing?

A. Yes; I am sure.

Q. How long do you think Mr. Risley was in the bank, if you remember, on the 4th of January?

A. I don't know; he might have been there ten minutes.

Q. You took no notice of the time; he might have been there longer.

A. I don't think he was there longer. I could not tell how long he had been there.

Q. Do you remember whether the subject of Southern banks came up between you?

A. No, sir; I am very positive it did not.

Q. If there was any conversation as to the condition of things in the South, it was not between you and Mr. Risley?

A. No, sir.

Q. Was all that transpired what you have stated to the jury?

A. Yes, sir.

Q. Did you make any memorandum of that conversation?

A. No, sir; I did not.

Q. You are speaking now from the recollection of sixteen years as to a conversation.

A. It was actively impressed upon me at the time.

Q. You have plenty of conversations about money, have you not?

A. Yes, sir; but this was of a peculiar character.

103 Q. I want to know, as to a matter of fact, whether you are not now testifying upon a recollection of a conversation that transpired sixteen years ago, the 4th day of this month?

A. Yes, sir; I am.

Q. Without ever having made a memorandum of that conversation?

A. Yes, sir.

Q. Can you undertake to state every word he said?

A. Word for word, I could not, of course.

Q. You undertake to give us the best recollection you have as to the substance of what took place; is that not so?

A. Yes, sir.

Q. Did you know Mr. Wheaton?

A. No, sir.

Q. Did he introduce himself, or was he introduced to you by Mr. Bishop?

A. No, sir; he was not introduced to me by Mr. Bishop.

Q. Did Mr. Bishop come to you, stating Mr. Wheaton was there?

A. Yes, sir.

Q. He appeared to be an acquaintance of his?

A. Yes, sir.

Q. About what time was that?

A. That was shortly after the opening of the bank.

Q. What time does the bank open?

A. At ten o'clock—I mean for business.

Q. Was that before the service of that process then?

A. No, sir.

Q. You have an endorsement here of $11.50?

A. Yes, sir.

Q. It was before the service of that process?

A. No, sir.

Q. When that process was served upon you, a copy was left with you, was there not—a paper was left?

A. This was left.

Q. They didn't leave the original with you?

A. That is the paper I marked on the back.

Q. Did you keep it altogether?

A. I kept that paper; yes, sir.

Q. Never returned it?

A. No, sir; that is my memorandum on the face of it. (Exhibit No. 1 shown witness.) Is that the paper?

A. That is the paper that was left.

Q. Look at it and see.

A. This is the paper that was left, because it has my memorandum on it.

Q. May you not have endorsed your memorandum on two or three copies?

A. This is the paper I had.

Q. It is very evident that you are mistaken.

A. I cannot be mistaken that that is my memorandum.

Q. You are confident that is the paper that was handed to you?

A. Yes, sir; I am confident, because I see my own memorandum on it, and I recollect handing it over to my counsel.

104 Q. Upon the receipt of that process, whatever that was, did you do anything towards protecting the fund?

A. What way do you mean protecting it? I don't understand the idea.

Q. I mean to say, did you intervene to save it at all in any way?

A. We kept it.

Q. Until the United States took it?

A. Yes, sir.

Q. Did you intervene at the court?

A. I did nothing but keep the funds.

Q. Did you take any steps to protect the interests of the Georgetown Bank, or anybody else?

A. Of course not.

Q. You did nothing to protect the interests of the Georgetown Bank, actively, in court, I mean; you didn't intervene and didn't give any notice to the Georgetown Bank?

A. No, sir.

Q. As a matter of fact, you neither did give notice to the Georgetown Bank, nor did you attempt to?

A. No, sir.

Q. Had you at any time between the time of the breaking out of the rebellion and the time of this suit attempted to communicate with the Georgetown Bank?

A. I don't remember.

Q. Not in any way?

A. I don't remember.

Q. Pending the rebellion checks had been drawn on you for money belonging to the Georgetown Bank, in your book, had there not?

A. Yes, sir.

Q. Those checks you had honored and paid?

A. Yes, sir.

Q. You gave no notice to the United States?

A. No, sir.

Q. Now we will come to the next interview with Mr. Risley: where did that take place?

A. I told you at my desk.

Q. I mean the second one.

A. I don't know whether it was at my desk, or near my desk.

Q. You don't remember whether you were sitting or standing?

A. No, sir; I was in the bank, at any rate.

Q. Do you remember how long he was in the bank?

A. I don't remember.

Q. Did you make any memorandum of that conversation?

A. No, sir; I did not.

Q. Do you now, in testifying as to it, speak after a memory of sixteen years?

A. A memory of facts at the time.

Q. You rely upon your memory after a lapse of sixteen years, passing through all the varieties that you pass through as the cashier of a bank?

A. The thing has not been a blank to me.

105 Q. You never made any memorandum of it?

A. No, sir.

Q. Do you remember what was the first word said on the second day?

A. No, sir.

Q. Do you remember what was the first reply you made to any question he asked?

A. Yes, sir.

Q. Can you remember the first sentence he said to you?

A. I can remember that he expressed his surprise at my not paying the check.

Q. That was the conclusion of what he said, was it not?

A. Yes, sir.

Q. You don't pretend to give the words?

A. I don't pretend to give the exact words.

Q. You are giving the substance of what took place?

A. Yes, sir; the actual facts.

Q. Can you state he did not state to you—"Why, what has the Georgetown Bank got to do with this; this is my money?"

A. Yes, sir; I can state that; I state he did not say so.

Q. Didn't he claim that, and, upon that, didn't you tell him to go to the district attorney and make it right with him, and he would pay it?

A. No, sir; he claimed to have the check paid.

Q. Why?

A. He didn't say.

Q. Because it belonged to the Bank of Georgetown?

A. He didn't say.

Q. He didn't say, "This is my money, and not the money of the Georgetown Bank?"

A. No, sir; he did not; I am certain he did not.

Q. He didn't refer to the fact that he had any interest in the money?

A. No, sir; except holding the check.

Q. He didn't say the check belonged to him?

A. He said he wanted the money on that check because I promised to pay it to him.

Q. Didn't he say he owned the check?

A. No, sir.

Q. He was complaining that the Government of the United States had taken the money out of the Georgetown Bank; was that it?

A. He was complaining that he could not get the money on that check.

Q. Didn't he say this in substance: "You promised me yesterday that you would pay me this money; now, why don't you keep your word?" or words to that effect?

A. No words to that effect.

Q. Nothing of that kind?

A. No words to that effect—the substance.

Q. That was the substance?

A. Yes, sir.

Q. Can you swear he didn't say in substance, "Now, this is my
106 money, and I want it; the Georgetown Bank has nothing to do with it?"

A. No, sir; he did not.

Q. Did he demand that you should pay him his money?

A. He demanded that I should pay that check.

Q. He demanded it at that time?

A. Yes, sir; and I told him it had been seized.

Q. When did you have the next interview?

A. I don't know.

Q. You told him to go to the district attorney and make it right, and you would pay it?

A. Yes, sir; that is the last interview that I remember.

Q. Do you remember that you had an interview with him on the 6th?

A. No, sir; I have no recollection of it.

Q. Can you swear you didn't have an interview with him then?

A. I would not like to swear either way on that.

Q. When he came in there?

A. He had come in there.

Q. You cannot swear whether he did or not?

A. No, sir.

Q. Can you state when he was in there on the 5th, whether Mr. Bryson was there or not?

A. I don't think he was.

Q. Can you swear he was not?
A. I am not clear on that.
Q. You cannot swear whether he was or not?
A. I could not on that day; this was on the 5th.
Q. Can you say who else was in the room; can you tell whether there was any one else in the room?
A. The clerks of the bank.
Q. Can you tell whether there were any others there having business with the bank?
A. No, sir.
Q. Do you know whether there were or not?
A. No, sir.
Q. Can you say whether there were ten there?
A. I could not say; do you mean ten dealers with the bank?
Q. Yes, sir.
A. No, sir; I could not say.
Q. You cannot say whether you had an interview on the 6th; do you remember whether you had an interview on the 7th?
A. No, sir.
Q. That would be Thursday.
A. I should have remembered it if I had extensive interviews of that kind.
Q. Can you swear whether you did or did not?
A. Yes, sir; I can swear I didn't.
Q. You had an interview with him which was a boisterous interview, did you not?
A. The first interview.
Q. Was that the 5th?
A. That was the 4th.
Q. That was not a boisterous interview?
A. The 4th and 5th.
107 Q. Was the 4th a boisterous interview?
A. No, sir.
Q. Was the 5th a boisterous interview?
A. He was excited in expressing his astonishment that the check was not paid.
Q. Was that interview the boisterous interview of which we are speaking, and as to which you swore to in the affidavit in opposition to amending the complaint; in that affidavit you swore there was very hard talk, and a boisterous interview, and threats of violence?
A. No, sir; I made no such affidavit.
Q. Did you hear any such threats made to Mr. Bryson?
A. I heard the excited tones, but the words I didn't hear.
Q. There was a talk with Mr. Bryson?
A. Yes, sir.
Q. When was that?
A. I don't remember when that was.
Q. Can you tell anything about the day?
A. I can only remember he came in to Mr. Bryson's desk in a very excited manner, and what the exact words were I could not hear.
Q. He did have an interview with Mr. Bryson?
A. Yes, sir.
Q. Can you tell whether he had more than one interview with Mr. Bryson?
A. That I could not tell.

Redirect:

Q. What, if anything, enables you to recollect that Mr. Bryson was not in the bank on the 4th of January, 1865?

A. That I went over to consult Mr. Stuart; he not being there I could not consult with the president, and therefore I went over to Mr. Stuart, the assistant treasurer, to consult as to what was to be done.

Q. That fixes it in your mind that Mr. Bryson was not there on that day?

A. Yes, sir.

Recross:

Q. How long a time intervened between the time of this conversation with Mr. Risley and the time you went to Mr. Stewart?

A. I should think it was about three o'clock.

Q. How long a time intervened?

A. It might have been a quarter of an hour.

Q. And you may very well be mistaken as to the length of time?

A. No, sir; it was early.

Q. You say about fifteen minutes?

108 A. It might have been twenty minutes.

Q. You didn't fix the time by your watch?

A. No, sir; it might have been twenty minutes, and it might have been thirteen minutes.

Q. And might have been half an hour?

A. No, sir; I don't think it might have been half an hour.

Q. Is it not possible it might have been half an hour?

A. No, sir.

Q. What you do remember is that when you went to Mr. Bryson's desk or looked to Mr. Bryson's desk to consult with him about going over to Mr. Stewart's office, that he was not there?

A. I must have known he was not there without looking.

Q. He was not there?

A. No, sir.

Q. Did you look around the bank for him?

A. That I don't remember, only he could not have been there or I should have consulted him.

Q. It was after the close of bank hours you went to Mr. Stewart?

A. I think it was about three o'clock; I must have left the bank immediately after three o'clock, as soon as I could, because my mind was in an anxious condition in regard to the check.

Q. Did you leave that bank before the bank closed?

A. I think not; I think I left it at three o'clock; I might have done so before; I don't say I did not.

Q. Do you remember anything that you had to do on the 4th day of January between the hours of two and three o'clock except this?

A. No, sir; I don't remember.

Q. Can you remember any other individual thing that you had to do at the close of bank hours interesting to the bank or yourself?

A. No, sir.

Q. Nor how many you saw between the hours of two and three o'clock?

A. No, sir.

Q. Did you tell Mr. Risley at any time, that you had been and consulted with the assistant treasurer as to what should be done?

A. No, sir.

Q. After he had called there?

A. No, sir.

Q. You never said anything about that?

A. No, sir.

Redirect:

Q. The John A. Stewart you referred to is president of the United States Trust Company?

A. Yes, sir.

109 PETER M. BRYSON, a witness called on behalf of defendant, being duly affirmed, testifies:

By Mr. VAN WINKLE, defendant's counsel:

Q. Are you connected with the Phenix Bank?

A. Yes, sir.

Q. In what capacity?

A. President.

Q. How long have you been president, about?

A. Since 1864.

Q. And before that you were connected with the bank in any other capacity?

A. For more than forty-one years I have been in the bank.

Were you president in January, 1865?

A. Yes, sir.

Q. And you have remained so since?

A. Yes, sir; and I am to-day.

Q. Were you present in the bank on the 4th of January, 1865, when Mr. Risleypresented the check in question, the first time?

A. Presented it to me?

Q. When he presented it in the bank?

A. No, sir; I have no recollection of it at all.

Q. Have you any question about it?

A. No, sir.

Q. Do you recollect when, for the first time, you saw Mr. Risley?

A. Yes, sir.

Q. Please state that to the jury?

A. Some years ago, long subsequent to the commencement of Mr. Risley's action against the Phenix Bank, he came into the bank and threatened to assassinate me.

(Plaintiff's counsel objects to the latter portion of the answer; objection sustained.)

The WITNESS. That is the first time I saw him, long subsequent to the commencement of the action.

Q. The first time you saw him?

A. Yes, sir.

Q. How often have you seen him since in the bank, prior to this trial?

A. Never.

Q. Except that once?

A. Except that once.

Q. What occurred that time?

(Objected to, on the ground that it occurred after the commencement of the action.)

Mr. VAN WINKLE. Mr. Risley said he never threatened to assassinate him.

The COURT. Then you are bound by his answer.

(Objection sustained; defendant excepted.)

Q. That is the only time since the presentation of this check
110 that you have ever seen him?

A. The only interview, if that may be called an interview, that I ever had with Mr. Risley in my life, or he with me.

Q. And he never told you he had a claim against the Phenix Bank?

A. No, sir.

Q. Was there ever presented to you, as president of the Phenix Bank, or, to your knowledge, to any officer of the bank, any claim for the money to the credit of the Georgetown Bank in the Phenix Bank, except by this check?

A. No, sir.

Q. Did you ever hear from Mr. Risley or his attorney, until this second trial, that they had purchased this claim?

A. No, sir.

Q. Do you recollect Mr. Risley saying to you or to any one, to your knowledge, in the bank, that he had called to notify them that this amount of that indebtedness had been transferred to him?

A. He never said so to me, and I never heard him say so to any one in the bank.

Q. Did you ever tell him that you accepted that notice?

A. No, sir.

Q. And agreed to hold the money subject to his order on that paper through some known party?

A. No, sir.

Q. Did you ever have this check in your hands?

A. No, sir.

Q. Did you ever make a copy of it?

A. No, sir.

By the COURT:

Q. Did you ever see the check in anybody's hands?

A. No, sir; I have no recollection of ever seeing the check; he never produced it to me.

By Mr. VAN WINKLE:

Q. On the 5th of January, or after the alleged presentation of the check at the bank, did Mr. Risley see you at the bank?

A. No, sir.

Q. Did he say to you, "Mr. Bryson, how is this; I presented this check to you yesterday, and you agreed to pay it if it was presented through some known party?"

A. No, sir; he never said any such thing to me.

Q. "To-day that party has been here and refused"?

A. No, sir.

Q. Did you say to him, "The money has since been attached by the government"?

A. No, sir.

Q. Did he say to you, "What has the government got to do with my money?"

A. No, sir; never.

111 Q. Did you say to him, "They have not attached it as your money; they have attached it as the money of the Bank of Georgetown"?

A. No, sir; I never said that.

Mr. BEEBE. This comes within my objection.

By the COURT. Yes, sir.

Q. "This $10,000 belongs to me"; did he say that?

A. No, sir.

Q. In fact, no interview of the kind occurred between you and Mr. Risley?

A. No, sir.

Q. (Handing paper to witness.) Look at that paper, and state what it is.

(Paper shown witness, marked Exhibit No. 4, for identification, January 4, 1878.—C. H. V. B.)

By the COURT:

Q. Did your bank receive this paper?

A. Yes, sir.

Q. When?

A. On September 7, 1861.

By Mr. VAN WINKLE:

Q. Mr. Risley says on another occasion: "What did you say to Peter M. Bryson?"

A. I said, "Here is a claim that was transferred to me by the Bank of Georgetown against your bank."

Q. Are those the words which you used?

A. I think so.

Q. Were those words ever used to you?

A. No, sir.

Q. Did he ever say to you: "The Bank of Georgetown has transferred to me that much of their claim against the Phenix Bank?"

A. No, sir; he never said that to me.

Q. Did you ever say, in reply to him: "The paper is good; the check is good; I recognize the handwriting; the money is here, and has been here for four years; and we will pay it"; did you ever say that?

A. No, sir; I never said that.

Q. Did he ask you if the government had attached it, or meddled with it in any shape whatever?

A. No, sir; he never asked me such a question.

Q. Did you ever tell him to go to the district attorney, and if he would consent, that he, the president of the bank, would pay the claim?

A. No, sir.

Q. Nothing of the kind?

A. No, sir.

Q. Were you the person at the bank with whom Mr. Risley did the talking on the subject?

112 A. No, sir; only on the occasion that I testified to; that is the only occasion I had anything to do with Mr. Risley, or he with me; it was long subsequent to the commencement of this action.

Q. Do you recollect asking him to take a seat on the sofa, and having a conversation with him there?

A. No, sir; I ordered him out of the bank once.

Q. Did you ever see Mr. Risley in company with Henry A. Wilson, or any other person calling with him?

A. No, sir.

Q. Did you ever have any interview with Mr. Risley at the bank, except the one to which you have alluded, occurring subsequent to the commencement of this suit?

A. No, sir.

Cross-examined by Mr. BEEBE:

Q. When did you become president of this bank?

A. My predecessor, Mr. Tileston, died on the 29th day of February,

1864, and a few days afterwards I was elected to succeed him; I cannot tell exactly without referring to the books.

Q. Can you tell the day that was that you were elected to succeed him?

A. I cannot without referring to my books.

Q. That was rather an important event in your life, was it not?

A. Certainly, as far as I was concerned with the Phenix Bank, it was.

Q. Can you fix the month?

A. Yes, sir.

Q. What month was it?

A. It must have been the month of March.

Q. Are you sure?

A. Yes, sir; I am sure.

Q. About what time in the month of March?

A. It was either on a Wednesday or on a Saturday.

Q. Any Wednesday or any Saturday from the beginning to the end of March?

A. No, sir; I cannot tell exactly; it must have been the beginning.

Q. That is a conclusion?

A. It is a fact.

Q. It is not your memory?

A. I cannot tell the exact day.

Q. On the 20th day of May, 1861, you were cashier?

A. Yes, sir; I was cashier.

Q. You became president in the year 1864?

A. Yes, sir.

Q. And you filled the position of cashier between 1861 and the time you were elected president?

A. Yes, sir.

Q. What position did Mr. Parker hold there?

113 A. He succeeded me.

Q. Before he was made cashier what position had Mr. Parker held?

A. He was transfer clerk, general bookkeeper; he had the general books of the bank, and had for many years.

Q. He took your place when you were appointed president?

A. He was appointed cashier in my place.

Q. The business of that bank is very large, is it not?

A. Yes, sir.

Q. What is its capital?

A. A million of dollars, now.

Q. It has been reduced?

A. Yes, sir.

Q. How much was it?

A. It was $1,800,000.

Q. And it has always been a popular bank in New York, has it not; you have a great many dealers?

A. Yes, sir.

Q. Deposits reaching how many millions a year?

A. I cannot tell you.

Q. About how many?

A. I cannot tell you.

Q. Did you never know?

A. Yes, sir; by reference to the books I would know.

Q. You mean you have forgotten?

A. No, sir; I mean I cannot tell you how much they were.

Q. Did you ever know?
A. Yes, sir; I must have known.
Q. You know every year?
A. Yes, sir.
Q. Can you remember every year?
A. The exact amount?
Q. Yes, sir.
A. No, sir.
Q. Or an approximation?
A. Yes, sir; in the course of a year they would average, I suppose, two millions and a half, and from that to three millions—weekly average.
Q. That would be from 150 to 200 millions a year?
A. I cannot give you the figures.
Q. Can you tell within fifty millions?
A. No, sir; I cannot, without referring to the books.
Q. You don't remember?
A. No, sir; I don't charge my memory with it.
Q. You don't remember?
A. No, sir.
Q. So that if you never saw Mr. Risley, you had no occasion to charge your memory with anything, had you?
A. Yes, sir; in Mr. Risley's case I would have charged my memory with it.
Q. Why—because there was money seized?
A. No, sir; because he made a demand on the bank, and it was of so peculiar a character I would remember it.
Q. On the 4th of January where were you?
A. I don't know where I was.
114 Q. Do you remember what time you left the bank—if you left it?
A. No, sir; I left the bank frequently; I have been in the habit of leaving the bank frequently during the day.
Q. And for all the time you have been there?
A. Yes, sir; for the whole forty-one years I have been there.
Q. You have been in the habit of leaving the bank every day frequently?
A. I don't say that.
Q. I mean during business hours?
A. Yes, sir.
Q. You come in the morning and go away at night?
A. I leave occasionally during business hours, as my business requires me to do it.
Q. You cannot remember where you went or who you saw?
A. No, sir.
Q. Can you remember who you saw on the 4th of January, except the officers of the bank?
A. No, sir.
Q. Can you state any outside persons you saw?
A. No, sir.
Q. Can you tell me any business you had with any individual on the 4th of January that you remember?
A. I cannot specify.
Q. Can you tell me the time you reached the bank on the morning of the 4th?
A. No, sir.

Q. Can you tell me what time of the day you went out of the bank on that day?
A. No, sir.
Q. Can you on the day of the third?
A. No, sir.
Q. Can you on the day of the fifth?
A. No, sir.
Q. Can you on the day of the sixth?
A. No, sir.
Q. Can you on any day in the month of January?
A. No, sir; I don't think I can.
Q. Or in February?
A. No, sir.
Q. Or in March?
A. No, sir.
Q. Or in April?
A. No, sir; no specified day.
Q. Or any specified individual you have had conversation with—I mean outside dealers—that now reside in your mind?
A. No, sir.
Q. Nothing of that kind?
A. No, sir.
Q. How many of these folks do you suppose in the course of the day you were in the habit of talking with?
A. I don't know.
Q. Can you give me an approximation to it?
A. On that specific day?
Q. No; on any day during that winter.
A. No, sir, I cannot; of course I cannot.
Q. Or how many you were in the habit of seeing in a day?
A. I sometimes see a dozen people in a day, and sometimes half
115 a dozen, and sometimes two or three, just as the nature of the business happens which calls me to them.
Q. You make no memorandum of such conversations, as a general rule?
A. No, sir.
Q. (Referring to check.) This is more in the shape of a draft than a check, is it not?
A. No, sir; it is a bank check.
Q. Is that the way your checks are drawn?
A. Bank checks; yes, sir.
Q. You mean one bank on another?
A. It is a check on a bank.
Q. (Handing check to witness.) Is that the usual appearance of the check?
A. This is an individual check.
Q. Was it a check which one bank drew on another?
A. I don't know any two banks whose checks are alike; this is the form of an ordinary bank check.
Q. What is the difference between that and a bill of exchange drawn on sight?
A. A bill of exchange is generally drawn in three parts—first, second, and third.
Q. "Pay to," addressed to?
A. Of course, it is addressed to the bank on which it is drawn.

Q. It is addressed to the bank, but it is not the bank so and so will pay, but please pay so and so, and then addressed to the bank?

A. Certainly.

Q. Is that not the way bills of exchange are drawn?

A. Yes, sir; but a bill of exchange is always drawn in two or three parts.

Q. Is that not the form of it?

A. I cannot tell you exactly; they differ; you won't find any two alike.

Q. "Bank of Georgetown, South Carolina, May 20, 1861, pay to the order of David Risley, $10,000," addressed to the Phenix Bank of New York; is that the way checks are ordinarily drawn—is that not the ordinary form of a draft or an order?

A. It is the ordinary form of a bank check.

Q. All of them? I understood you to say there was a difference.

A. There is a difference.

Q. Whatever you call it—check, draft, or order—if that was presented to you, and you had the funds in your bank, and there was no order not to pay it, or the check had not been countermanded, there was no reason why you should not pay it, if the party was identified?

A. If the signature was correct, and the party was properly identified, it would be a check in order.

Q. It is the ordinary way of getting money out of a bank?

116 A. Yes, sir; a check.

Q. Such an instrument as that you would pay?

A. Yes, sir.

Q. There would be nothing unusual in telling them you would pay it?

A. In the first place, it would not be presented to me at all.

Q. If it came after that lapse of time, would it not be very likely to be presented to you?

A. No, sir.

Q. Never?

A. Not in the ordinary course of business.

Q. Do you mean to say that during the time you were president a check or draft has never been presented to you?

A. No, sir; because the cashier has frequently referred matters to me.

Q. It is a common occurrence, is it not?

A. No, sir; it is not.

Q. It has been done?

A. Yes, sir.

Q. Can you tell how many times it has been done since 1864?

A. No, sir.

Q. Can you approximate it to me?

A. No, sir; I cannot; it was a matter that didn't refer to me.

Q. It is nothing unusual for checks or drafts to be drawn upon your bank and payment requested?

A. Certainly not.

Q. It is not anything unusual for parties to request to be identified?

A. It is usual.

Q. It is not unusual for the paying teller to refer parties to some one in the back room for it?

A. Yes, sir; it is; it is a frequent occurrence that the paying teller will go to the cashier.

Q. It is not an unfrequent occurrence that that thing is done?

A. I said it was a frequent occurrence.

Q. Can you remember of any outside transaction or any interview

that you had with any individual between the 4th of January and the middle of February, in your bank, in regard to business matters?

A. Not specifically.

Q. Do you know of any reason why, if you were the person that Mr. Risley had the interview with, there is not any special reason why he should have had it with you?

A. None whatever.

Q. There is no reason why he should have picked you out to have it with, if he didn't believe it was true?

A. No, sir; but he never had such an interview with me.

Q. He did have the money in the bank?

A. The cashier has testified to that.

Q. I am asking you now.

A. I don't know.

Q. You don't know whether there was any money there at all or not?

117 The COURT. It is excluded as immaterial. It is admitted in the pleadings they had the money.

Q. There is no doubt about the fact that the money was there?

A. I have no doubt about it.

Q. Is there any doubt about the fact that the money had been there since 1861?

A. I cannot tell that without referring to my books; because it don't come within my province as president of the bank.

Q. Is that within the cashier's province?

A. I say the bookkeeper who kept the account of the bank, and the cashier.

Q. Does it come within the cashier's province?

A. Yes, sir.

Q. You were cashier from 1861 to 1864?

A. Yes, sir.

Q. How is the fact about that?

A. I can show by the balance-book of the bank whether it was there.

Q. You have no doubt it was there since 1861?

A. No, sir.

Q. Have you any knowledge, as cashier, that any deposits were made by the bank of Georgetown between May, 1861, and January, 1865?

A. I have not now.

Q. Have you any recollection on the subject?

A. No, sir.

Q. If it was done, you would have been likely to have known about it?

A. At the time; yes, sir.

Q. You don't remember whether you had or not?

A. No, sir.

Q. Do you remember whether any checks were paid during that time?

A. No, sir.

Q. Do you remember whether you held any drafts?

A. No, sir.

Q. If you had you would have known it as cashier?

A. Yes, sir; I would have known it.

Q. If you did, you have forgotten it?

A. I don't remember it.

Q. If it was done you have forgotten it?

A. I don't remember any transaction occuring at that time.

Q. Do you remember a draft being drawn for $5,000?
A. No, sir.
Q. Do you know Mr. Edwards Pierrepont?
A. No, sir.
Q. Did you ever hear of him.
A. Yes, sir; I heard of him very often.
Q. Did you ever see him to your knowledge?
A. Not to my knowledge.
Q. Did you ever hear anything about a draft being drawn payable to him?
A. No, sir.
Q. If there had been such a draft, you would have known it at the time?
A. Not necessarily.
Q. You probably would have known it?
A. No, sir.
118 Q. If it was drawn by that bank on your bank?
A. No, sir; the paying-teller would pay it if the money was there and the check was in order.
Q. For any draft drawn on you, and you had known they were in rebeldan?
A. If the funds were not attached, if the drafts came in proper order, and there was no legal objection he would have paid them.
Q. It would not have made any difference about the fact that the bank people drew the drafts there in rebeldan, provided the funds had not been attached?
A. We would have paid it if the funds had not been enjoined.
Q. Just exactly as you paid this?
A. We didn't pay it.

Redirect:

Q. Was there any other instance at the bank, where an account was drawn from rebeldan, as my friend terms it, to your knowledge, and paid by the bank?
A. I have no recollection of it.
Q. He asked you if you would have paid it; would you have paid it with that knowledge in your possession?
A. Certainly not with notice from the United States district attorney.

GEORGE B. MCKITTRICK, a witness called on behalf of the defendant, being duly sworn, testifies:

By Mr. VAN WINKLE:

Q. Were you a stenographer in October and November, 1871?
A. Yes, sir.
Q. (Handing paper to witness.) Will you be kind enough to look at the papers now shown you, and state what they are?
A. They are a copy of the stenographer's notes taken by me in the case of David Risley against the Phenix Bank.
Q. Of whose testimony?
A. David Risley.
Q. The plaintiff?
A. Yes, sir.
Q. Do those notes correctly state the testimony as given by Mr. Risley on the occasion on which they purport to be taken?
A. Yes, sir.
Q. Where were those notes taken and before whom?

119 A. They were taken October 19th, November 9th, and November 17th, 1871, before Henry Nicoll, referee.

(Paper shown witness, marked Exhibit Nos. 5 and 6, January 14, 1878, C. H. V. B.)

Cross-examined by Mr. BEEBE:

Q. How was this testimony taken down?

A. Stenographically, by me.

Q. It was taken in short-hand?

A. Yes, sir.

Q. And afterwards written out?

A. Yes, sir.

Q. In whose handwriting are these minutes written out?

A. They are in mine.

Q. Were they ever read to Mr. Risley?

A. No, sir.

Q. Ever corrected in any way to your knowledge?

A. Not by me; they were never corrected by me since they were written out.

Q. From your stenographic notes you wrote them out, and they were never shown to the witness after they were written out?

A. That I cannot say.

Q. Were your minutes ever read to the witness?

A. Not to my knowledge.

Q. Are you very clear the stenographic notes were never read to him?

A. They were never read by me to him.

Q. What office were you connected with?

A. The office of Henry Nicoll.

Q. You were a clerk with Mr. Nicoll at that time?

A. No, sir.

Q. Employed in his office?

A. No, sir; I was not employed in his office, except by counsel in cases.

Q. Where did you have your place of business?

A. 30 Pine street.

Q. That was Mr. Nicoll's office?

A. Yes, sir.

Q. You had charge of your own stenographic notes?

A. Yes, sir.

Q. And you had never read them to Mr. Risley?

A. Yes, sir.

Q. That you know?

A. Yes, sir.

Q. And after they were written out you don't know that they were ever read to Mr. Risley, nor that Mr. Risley ever read them?

A. No, sir.

Q. Have you ever had any experience as a court stenographer?

A. Yes, sir.

Q. What court?

A. The United States court; on one trial for four weeks.

Q. When?

A. In 1875?

Q. Before 1871 had you?

A. I cannot remember.

Q. You ought to be able to remember if you were taking notes in court before that period?

120 A. I would if you handed me the notes the same as those notes are handed to me now.

Q. You can tell them by looking at them whether you made them or not, can you?

A. Yes, sir.

Q. And you can tell whether the stenographic notes are in your handwriting or not, if they were shown to you; and that is all you can tell about them?

A. Yes, sir.

Q. Have you ever made a mistake in reporting?

A. I presume I have.

Q. You can't say you didn't make a mistake here?

A. Not at this length of time, since 1871.

Q. It is not anything unusual for stenographers to make mistakes in taking down minutes and writing them out, is it?

A. No, sir.

Q. It is a very common thing?

A. Not with good ones.

Q. It is nothing unusual for stenographers to make errors in writing out?

A. No, sir; it depends on who the stenographers are?

Q. As good a stenographer as McKittrick?

A. Yes, sir; I have made some mistakes.

Redirect:

Q. You have no doubt these notes represent the testimony as given?

A. Not the slightest.

JOHN E. BISHOP, a witness called on behalf of defendant, being duly sworn, testifies:

By Mr. CANDLER:

Q. Are you in the employ of the Phenix National Bank?

A. I am.

A. And have been how long?

A. Since May, 1836.

Q. Have you heard the testimony of Mr. Risley, and Mr. Parker, and Mr. Bryson, given on this trial?

A. I have.

Q. Do you remember the occasion on the 4th of January, 1865, when Mr. Risley came into the bank?

A. I do.

Q. In the afternoon of that day?

A. Yes, sir.

Q. With whom had he any conversation on that occasion?

A. Mr. Parker.

Q. Was Mr. Bryson present on that occasion?

A. He was not.

Q. Were you present on the morning of the 5th of January, 1865, when Mr. Wheaton came in with the check which is the subject of this action?

121 A. I was; he handed me the check.

Q. Do you remember having a conversation with Mr. Wheaton and Mr. Parker on that occasion?

A. I do.

A. Was Mr. Bryson present in the bank at the time?

(Objected to.)

A. Yes, sir; Mr. Bryson was in the bank.

Q. Was he in when Mr. Wheaton came in?

A. He was.

Q. Were you present later in the day, when Mr. Risley came in on the 5th of January?

A. I was; one moment, I would like to correct that. It was on the following day.

Q. The afternoon of the 4th you say the conversation was with Mr. Parker?

A. Yes, sir.

Q. And Mr. Bryson was not present?

A. He was not present; it was on the 5th that Mr. Wheaton came to me.

By the COURT:

Q. Did you see Mr. Risley in the bank on the 5th?

A. I don't recollect about the 5th.

By Mr. CANDLER:

Q. You are quite sure Mr. Bryson was not there on the 4th?

A. I am quite sure he was not there on the 4th.

Cross-examined by Mr. BEEBE:

Q. You knew Mr. Wheaton?

A. I know him.

Q. You didn't know Mr. Risley?

A. I did not.

Q. You think you saw Mr. Risley there on the 4th?

A. I know I did.

Q. Did you see a good many gentlemen in there on that day?

A. Yes, sir; I suppose I did.

Q. Do you remember anybody else that was in there on that day except him?

A. I could not designate any one else.

Q. You had never seen Mr. Risley before that time?

A. No, sir.

Q. What was your position in the bank at that time?

A. Corresponding clerk.

Q. Did you on the 4th see the check?

A. No, sir; I did not.

Q. Was it presented to you?

A. It was presented to me on the 5th.

Q. I am talking about the 4th?

A. No, sir.

122 Q. Did you see it at all on the 4th?

A. No, sir.

Q. Did you see a copy of it on the 4th?

A. No, sir.

Q. Did you take a copy of it?

No, sir.

Q. Whereabouts is your place in the bank?

A. I am near the cashier's desk.

Q. How far from it?

A. About four feet.

Q. Do you remember when you next saw Mr. Risley after that day?

A. Yes, sir.

Q. When?
A. I could not tell you the date.
Q. Within a day or two of that time?
A. No, sir; it was after the suit had been commenced.
Q. You don't remember seeing him at the bank at all, except on the first day?
A. That is all.
Q. Did you have any interest in the conversation?
A. No, sir.
Q. Can you state what did take place between Mr. Parker and Mr. Risley?
A. No, sir; no other than he presented the check for payment?
Q. Nothing more than that?
No, sir.
Q. How long do you think that conversation lasted?
A. I should say about seven or eight minutes.
Q. Have you any distinct recollection now as to the length of time?
A. Yes, sir; I think it didn't last over ten minutes.
Q. You didn't time it at all?
A. No, sir.
Q. And you didn't hear what took place?
A. No, sir.
Q. How do you know Mr. Bryson was not there?
A. I know he was not there from the fact that Mr. Parker, after Mr. Risley had gone out, expressed a wish to consult him, as he had some doubt about paying it.
Q. Do you remember how long that was after the bank closed?
A. The bank was not closed.
Q. When he wished to consult him it was not closed?
A. No, sir.
Q. Do you remember what time Mr. Risley was in there?
A. He was there, I should say, about three o'clock.
Q. Have you any recollection about the time?
A. Yes, sir; it was late in the afternoon.
Q. As a matter of recollection?
A. I recollect it.
Q. Can you recollect what other gentlemen were in the bank at the time?
A. I could not say, for they were running in and out all the time.
Q. And they talk all the time, don't they?
A. Sometimes they do.
Q. You can remember no one except Mr. Risley?
A. No, sir.
Q. There was nothing peculiar in the fact of Mr. Risley presenting a check?
123 A. Yes, sir; there was, because it was a check that was antedated.
Q. Did you see it?
A. No, sir; but Mr. Parker told me.
Q. Can you tell when the president, Mr. Bryson, had gone out of the bank?
A. I cannot tell about that.
Q. Do you know where he had gone?
A. No, sir.
Q. Can you tell what time elapsed between the time since Mr. Risley was there and Mr. Parker mentioning the subject?

It was directly after Mr. Risley was there.
Q. How long?
A. A minute.
Q. About how long?
A. Half a minute.
Then did Mr. Parker leave and go out?
A. I believe he did.
Q. He didn't want Mr. Bryson to return?
A. No, sir.
Q. Do you know whether that was before or after the bank had closed?
A. It was before the bank closed.
Q. He left to go out before the bank closed?
A. Yes, sir.
Q. Did you make any memorandum of this conversation?
A. I did not.
Q. When was your attention first called to this conversation; to this fact, to this incident?
A. I don't remember that it was called to it now.
Q. Is this the first time?
A. Yes, sir; I think so.

Redirect by Mr. VAN WINKLE:

Q. Was there not talk about this at the bank about this time?
A. Certainly, it was a subject of conversation.
Q. That was calculated to impress itself on your memory, I suppose?
A. Yes, sir.
Q. And you have thought over the matter since?
A. Yes, sir.
Q. Have you not at various times been asked what your knowledge of the interview was?
A. Yes, sir; I have been asked if I remembered it.
Q. Various things tend to impress it on your mind, I suppose?
A. It has been the subject of frequent conversations.
(Defendant's counsel read in evidence the stenographer's notes of the testimoney of the plaintiff, given on the trial of this action, before the referee. The same were marked Exhibits Nos. 5 and 6, and are as follows:)

124 EXHIBIT No. 5.

Supreme court.

DAVID RISLEY
vs.
THE PHENIX BANK OF THE CITY OF NEW YORK.

NEW YORK, *October* 19, 1871.

Before Henry Nicoll, esq., referee: Messrs. Beebe, Donohue & Cook, for plaintiff; Edgar S. Van Winkle, esq., for defendants.

DAVID RISLEY, sworn and examined by Mr. DONOHUE, testified as follows:

Q. Where do you reside now?
A. Georgetown.

Q. Starting in January, 1865, Mr. Risley, did you go to the Phenix Bank for any purpose; and, if so, what?

A. On the 4th January, 1865, I went to the Phenix Bank and presented this check.

Q. You went there for the purpose of presenting a check or draft?

A. Yes, sir.

Q. What became of that original draft; did you have a draft at that time?

A. I had a check drawn by the Bank of Georgetown on the Phenix Bank of New York.

Q. You did have a check at that time?

A. Yes, sir.

Q. What day was that?

A. Fourth January, 1865.

Q. What has become of that check or draft?

A. It was deposited with the petition in the office of the Secretary of the Treasury at Washington.

Q. What became of that, do you know?

125 A. Neither of them have been returned.

Q. Have you applied for them?

A. I have.

Q. Have you caused any inquiry there to be made for them?

A. Yes, sir.

Q. Or examination for them?

A. Yes, sir.

REFEREE. Whom did you give it to?

A. I presented it to ex-Governor Ford, and it went to the Secretary of the Treasury.

Adjourned to Tuesday, October 24, 1871, at 3 o'clock.

Supreme court.

DAVID RISLEY
vs.
THE PHENIX BANK OF THE CITY OF NEW YORK.

NEW YORK, *November* 9, 1871.

Before Henry Nicoll, esq., referee.

Direct examination of DAVID RISLEY continued by Mr. DONOHUE:

Q. Have you made any examination of any papers since you were last here?

A. I have.

Q. Did you receive the draft back again after it had been sent to the president.

A. I went and deposited a copy with the president; the original I retained.

Q. What became of the original?

A. It was destroyed by fire on the steamer General Hooker, in March, 1866.

REFEREE. Then it was only a copy that was sent to the president?

A. Yes, sir.

Q. When?

A. In March, 1866.

DEFENDANT'S COUNSEL. Where?

126 A. Sea, between Georgetown and Charleston.

Q. On that occasion did you lose any other papers or property besides that?

A. I was travelling with my wife and two sisters. One of them was drowned, and everything but what we stood in was lost.

Q. Did you recover any of your papers from that vessel?

A. We recovered nothing; everything was burned before we left the boat. The draft was in my baggage among a lot of papers.

Q. Do you know the draft spoken of in the pleadings?

A. Yes, sir.

Q. State when you purchased and received the draft.

A. I virtually purchased it in May, 1861.

Q. Why didn't you then get it and go North?

A. Because I couldn't leave there.

Q. You say you couldn't leave; why?

A. Well, the authorities wouldn't allow me to leave.

Q. When did you first get the opportunity to leave there?

A. I left there in 1863, I think it was.

Q. When you say "there," you mean Georgetown, South Carolina?

A. Yes, sir.

Q. When did you get the draft itself?

A. I got the draft in August, 1863.

Q. When did you say you left?

A. I think I left in December, 1863.

Q. From August to the time you left had you any opportunity of leaving?

A. No, sir.

Q. Was the draft given you or did you pay for it?

A. I paid for it.

Q. I may as well ask you at this time what is the condition of the bank?

A. Insolvent; broke; out of existence.

Q. When did it become insolvent?

(Objected to.)

Q. You got the draft; where did you go when you left there?

A. I went to the West Indies when I got the draft.

Q. When did you arrive in New York?

A. I arrived in New York on the 4th January, 1865.

Q. What did you do about the draft?

A. About two o'clock, I think, on the 4th I went to the bank.

Q. Have you got in your possession now a copy of it?

A. I have (witness produces copy).

Q. Is that a copy of it?

A. That is a copy of it.

Q. Do you know it?

A. Yes, sir; I know it.

Q. You presented it for payment?

A. Yes, sir.

(Copy of note offered in evidence, and marked Plaintiff's Exhibit A, November 9, 1871.)

127 Q. Who was president?

A. James G. Henney.

Q. Did you ever see him write?

A. Yes, sir.

Q. Do you know his handwriting?

A. Yes, sir.

Q. In whose handwriting was the name signed to the draft?
A. His; saw him sign it.
Q. You say that he was president?
A. Yes, sir.
Q. Had the bank any cashier at the time?
A. No.
Q. Now you say about two o'clock on the 4th January, 1865, you went to the bank?
A. Yes; the Phenix Bank.
Q. What did you do there?
A. On the 4th January, 1865, I went to the Phenix Bank of New York and asked for the cashier, and presented that check to the cashier of the Phenix Bank and asked him if it was good.
Q. Where was he when you presented it to him?
A. It was in the cashier's private office; it was a little fenced off place.
Q. What did he say to you?
A. He said the check was good; that the money was there, and that he would pay it. I claimed the amount in gold. He contended that he would not pay it in gold, but would pay it in currency. He said, "I prefer that you have it presented through some known party."
REFEREE. The draft was drawn to your order?
A. Yes, sir; and endorsed by me.
Q. Was it endorsed by you then?
A. Yes, sir. I told him that I would have it sent to him next morning through bank, so that he would run no risk in paying it. He recognized the signature, and admitted it to be genuine. He said that he was satisfied that it was all right; he knew the handwriting, but he preferred to pay it through some known party. After talking with him for some time, and as I was about to leave the bank, he asked me to hand him the check again—that is, after he had returned it to me. He made a copy of it. After having done so, I said to him, "If I identify myself you pay the checks?" He said he would.
Q. What did you do with it?
A. I deposited the check with a known party for presentation.
Q. You gave the check to whom?
A. To John Wheaton.
Q. In consequence of what he told you, what did you then do with the draft?
(Objected to.)
128 Q. You got it back from Mr. Wheaton?
A. Yes, sir.
Q. When?
A. The next day; I went again myself to the bank on the morning of the 5th; went to the cashier, presented the check, and asked him if he had refused to pay it that morning. His answer was, the money had been attached or libeled by the government.
Q. (Referring to copy of draft.) When you speak of that "Pay to the order of D. J. Seeley, signed David Risley," and "Pay to the order of David Risley, D. J. Seeley," when were they put on?
A. The first endorsement was put on soon after I got the draft. The second endorsement was put on about the 1st of January, 1864, when I went to St. John's, New Brunswick, to have them re-endorsed.
Q. The endorsement under that David Risley, the last endorsement, when was that put on?
A. The day I presented it.
Adjourned to Friday, November 10, 1871, at 1 o'clock.

EXHIBIT No. 6.

Supreme court.

DAVID RISLEY
vs.
THE PHENIX BANK OF NEW YORK.

NEW YORK, *November* 17, 1871.

Before Henry Nicoll, esq., referee.

Direct examination of DAVID RISLEY resumed by plaintiff's counsel:

Q. Is the Bank of Georgetown now in operation?

A. It is not.

129 Q. You said the question was asked when you went to see the cashier. Do you know now whether the person that you saw on the occasion you state was the cashier?

A. I went into the bank, and asked for the cashier.

Q. Since that time have you taken any steps, or do you know whether the party you saw the first time you went there was the cashier?

A. Yes, sir.

Q. When did you since see him, and where?

A. I saw him in the bank.

DEFENDANT'S COUNSEL. I take the cross-examination of this gentleman, subject to the right of my objection that this now appears to be an action on a lost note, and that they are not in a position to proceed in it.

Cross-examined:

Q. You say you now reside in Georgetown?

A. Yes, sir.

Q. You mean in South Carolina?

A. Yes, sir.

Q. How long have you resided there?

A. Since 1854.

Q. Where did you reside previous to that?

A. Philadelphia.

Q. How long?

A. Six or eight years.

Q. And previous to that where?

A. New Jersey.

Q. What place in New Jersey?

A. Catawba, in Atlantic County.

Q. How long there?

A. I was born there.

Q. And you lived there until you went to Philadelphia?

A. Yes, sir.

Q. At what age did you go to Philadelphia?

A. As near as I can recollect, I was about sixteen.

Q. What was your business in Philadelphia?

A. I was clerking.

Q. Till you went to Georgetown?

A. No, sir; I went into Maryland; I was engaged in business in Philadelphia, and traveled through Maryland selling goods.

Q. But your home continued at Philadelphia?

A. Yes, sir.

Q. Until you went to Georgetown?
A. Yes, sir.
Q. Did you go into business in Georgetown?
A. Yes, sir.
Q. What business?
A. Lumber.
Q. By yourself or with a partner?
A. Partners.
Q. Who were your partners?
A. My father.
Q. What is his name?
A. E. B. Risley.
Q. And who else?
A. Sayler and Syke.
Q. Exporting or importing lumber?
A. Manufacturing lumber and shipping it.
Q. Principally where to?
130 A. All over the Atlantic coast.
Q. North and South?
A. Yes, sir.
Q. Who were your correspondents, if any, in New York?
A. At that time we had several here.
Q. Who were they at any time?
A. The firm we did business with up to 1860; I forget their names; they are out of existence now; we did very little business with New York.
Q. Any one else you can name?
A. Jonathan Beers.
Q. Any one else?
A. No, sir; not that I recollect of.
Q. Where were you in April, 1861?
A. Georgetown, S. C.
Q. And how long after that did you continue there?
A. I recollect I was there about all the time during the war till some time in 1864.
Q. Which year?
A. I was in Georgetown away and from there all the time during the war until 1864; sometimes I was away three or four months at a time.
Q. You say that in April, 1863, you were in Georgetown; personally there?
A. Yes, sir.
Q. When did you first leave Georgetown after that, and where did you go?
PLAINTIFF'S COUNSEL. May I ask what the object of the examination is?
DEFENDANT'S COUNSEL. It is set up in the pleadings. You may examine the pleadings or take your objection.
(Objected to.)
A. I cannot positively recollect whether I left there in 1861 or not.
Q. I do not confine the question to 1861; when did you first leave there after April, 1861, and where did you go?
A. I think I left there in September, 1862; I am not certain whether it was then or in October—am not certain as to the date; I went to Richmond.
Q. How long did you remain at Richmond?
A. Two or three days.

Q. Then where did you go?
A. To Maryland.
Q. What part of Maryland?
A. Somerset County.
Q. This was during the war?
A. Yes, sir.
Q. Did you pass through the lines then?
A. Yes, sir.
Q. By a pass or permit?
A. Yes, sir.
Q. Who from?
A. I got a friend of mine to get it in Richmond from the State Department.
Q. That was from the Confederates?
131 A. Yes, sir.
Q. Had you any permission from the government?
A. Which government do you mean?
Q. Well, the Federal Government.
A. I did not, for I could not obtain such a permit without going to Washington to get it.
Q. Now, sir, how long were you in Maryland at that time?
A. Probably three months.
Q. What did you do there?
A. Simply nothing, except to settle up some business I had there.
Q. Then where did you go?
A. I went back to Richmond, my home.
Q. How long were you at Richmond when you went back?
A. Probably six hours.
Q. Then you went to Georgetown?
A. Yes, sir.
Q. When did you next leave Georgetown?
A. I was probably in Maryland longer than that; I am not certain; I might have been there eight months.
Q. After you went back from Maryland, or, by the by, was your business in Maryland to settle up old business?
A. My sole business in Maryland was to make arrangements to pay a mortgage on a plantation that was due.
Q. Kept you eight months?
A. No, sir; it did not keep me eight months; I remained as long as it was safe; I got my pass, and promised to return, and did return; further than that, it was absolutely necessary for me to return to protect my property South.
Q. Did you carry any goods with you to Maryland, or from Maryland back?
A. My baggage.
Q. Nothing else?
A. No, sir.
Q. After you got to Georgetown, how long did you remain there without leaving?
A. Probably a year.
Q. Without leaving the town?
A. Yes, sir; no, I beg your pardon, that is wrong; I was there but a few months.
Q. And then you went where?
A. I went back to Maryland again, sir.
Q. Under a new pass?

A. No, sir; I had no pass.
Q. Were you within the American lines?
A. Yes sir.
Q. How long did you stay in Maryland?
A. I was in Maryland and in Philadelphia for two or three months, I guess.
Q. What year?
A. 1863; I am not certain about the time.
Q. Then where?
A. From Philadelphia I went to Port Royal.
Q. How?
A. Went in a sailing vessel.
Q. From where?
A. Philadelphia.
132 Q. To where?
A. Port Royal.
Q. And then where?
A. From there to New Orleans.
Q. In what vessel?
A. The schooner Secretary.
Q. How long were you at New Orleans?
A. Did not reach New Orleans; the vessel put into Nassau in distress.
Q. In whose possession was Port Royal at the time you left there?
A. Federal.
Q. You were driven into Nassau in distress?
A. Yes, sir.
Q. What then, Mr. Risley?
A. I left Nassau and returned to Baltimore.
Q. Just go on and give a history from that time up to the time you came to the bank in January, 1865.
A. From Baltimore I went to St. John's, New Brunswick, and Halifax.
Q. How long were you there?
A. About a month.
Q. And from there?
A. Sailed from Halifax as a passenger for Nassau again.
A. When was that, sir?
A. In 1863, I think, sir.
Q. About what time of year do you recollect?
A. It might have been in October.
Q. You think it was?
A. I think it was.
Q. Well, how long did you remain at Nassau?
A. We did not reach Nassau.
Q. Where did you go?
A. Our vessel became disabled, and went ashore on the beach in South Carolina.
Q. Well, what then, Mr. Risley?
A. I remained there for a year.
Q. Where did you go in South Carolina?
A. At home.
Q. And remained there a year?
A. Not quite a year.
Q. And then left when, and went where?
A. Then I left and went to Nassau.
Q. When?

A. Well, I think in August, 1864; I am not certain; I think it was in August, 1864.

Q. Where did you sail from that time?

A. From Nassau?

Q. No.

A. From Georgetown; I was a passenger on the schooner Belle Hamilton.

Q. This was in 1864; what time?

A. August.

Q. Well, under what flag did you sail then?

A. English, I think; I am not certain.

Q. From Georgetown?

A. Yes, sir; I am not certain what the flag of the vessel was.

Q. It was not the United States?

A. I am not sure of that either.

Q. What gives rise to the doubt?

A. Well, I don't know; she might have been United States or Confederate States; I think it was Confederate States enrollment
133 that she had; but if she had any flag aboard it was the American flag; there was no other aboard that I saw.

Q. But she had a Confederate enrollment?

A. Yes, sir.

Q. Then you went to Nassau?

A. Yes, sir.

Q. Just go on.

A. From Nassau I went to Havana, from Havana I went to Matanzas; I remained in Cuba some two or three months.

Q. Where?

A. In Havana and all around the island.

Q. What was your business there?

A. Merely killing time.

Q. Couldn't kill it at home?

A. Yes, sir; in the army; I left to avoid the army, and had to pay well for it, too.

Q. Then you went round?

A. From Havana I went to St. Domingo, Porto Rico, St. Thomas, St. Kitts; from Antigua I took a passage on an English vessel for St. Johns, New Brunswick.

Q. When was that?

A. In December, 1864; arriving at St. Johns, New Brunswick, I went on to Halifax, and was in Halifax during Christmas week of 1864; from Halifax I came to Portland, from Portland to New York, arriving here on the 4th of January, 1864.

Q. How long since the Bank of Georgetown ceased operations?

A. I think, sir, they ceased operations in 1865.

Q. Couldn't say at what time in 1865?

A. After Sherman's army passed through South Carolina, or about the time it was passing.

Q. Are you now positive, Mr. Risley, that you only left a copy of this draft in Washington?

A. I am quite positive.

Q. What induced you to state on your first examination that the original was there?

A. I was under the impression that I left all the papers there with Mr. Ford, but found I only left the copy.

Q. How do you find that?

A. I got some of the papers back from Mr. Donohue that I had not seen before.

Q. You only left a copy there; you are positive of that?

A. Yes, sir.

Q. How long was this draft in the possession of this Mr. Seeley?

A. It never was in his possession until I handed it to him endorsed.

Q. You handed it to him to endorse when you went to St. Johns?

A. Yes, sir; to endorse it back to me again; I handed it to him to endorse it back to me.

Q. When did you endorse it to Seeley?

134 A. I endorsed it to Seeley when I first got it.

Q. How came you to buy this draft?

A. I wanted to get my money out of the country—out of that section.

Q. And you remained?

A. Yes, sir.

Q. Now, during all this period did you or not import or export, or ship abroad, or import into the country any merchandize—into the Confederate States?

A. No, sir.

Q. Not at all?

A. No, sir; I went abroad expressly to avoid the——

DEFENDANT'S COUNSEL. No matter; I did not ask you that.

Redirect:

Q. Besides the money, this draft, had you other property in South Carolina?

A. Yes, sir; I had probably $200,000.

Q. And up to the end of the war?

A. Yes, sir.

Q. Was not the property situated at the South of those residing at the North forfeited by the Confederates during the war?

(Objected to; taken subject to objection.)

A. Yes, sir.

Adjourned to Tuesday, November 21, 1871, at two o'clock.

Defendant's counsel renewed his request that the plaintiff be now recalled for further cross-examination, but the court refused to allow the plaintiff to be recalled.

Defendant's counsel offered in evidence a letter which plaintiff's counsel admitted was written by the plaintiff, and by him sent to the defendant, and which had been marked for identification Exhibit No. 7.

(Plaintiff's counsel objected to the same as immaterial and irrelevant; the objection was sustained, and the defendant's counsel excepted.)

Exhibit No. 7 was as follows:

135 EXHIBIT No. 7.

PHILADELPHIA, *Feb.* 5th, 1865.

President of the Phœnix Bank of New York:

SIR: You will recollect that I some days since presented to your bank a check for ten thousand dollars, drawn by the Bank of Georgetown, S. C., and signed by James G. Henning, president, dated May, 1861, on which you refused payment. Said check is not at present in my possession, though I am still the legal owner thereof.

You will therefore please not pay it to any one else until after I have presented it in person.

Respectfully, yours,

DAVID RISLEY.

Defendant's counsel offered in evidence the monition which was served upon the defendant on January 5th, 1865, and which had been marked for identification Exhibit No. 1.

(Plaintiff's counsel objected on the ground that no foundation had been laid for the admission in evidence of Exhibit No. 1; objection sustained; defendant excepted.)

Exhibit No. 1 appears in the back part of this book under the head of "Exhibits offered in evidence and excluded."

Defendant's counsel offered in evidence a copy of the decree of the district court of the United States for the southern district of New York, which had been marked for identification Exhibit No. 2.

(Plaintiff's counsel objected on the ground that the paper was not an exemplified record, and is only a part of the record, and that the record should be offered as a whole and not in detached parts, and that the decree is now offered out of order; objection sustained; defendant excepted.)

Exhibit No. 2 appears in the back part of this book under the head of "Exhibits offered in evidence and excluded."

136 Defendant's counsel then offered in evidence the marshal's receipt at the foot of said copy decree, which had been marked for identification Exhibit No. 3.

(Plaintiff's counsel objected to said receipt being read in evidence; objection sustained; defendant excepted.)

Exhibit No. 3 appears in the back part of this book under the head of "Exhibits offered in evidence and excluded."

Defendant's counsel then offered in evidence the original record, proceedings, and decree mentioned in the said answer to the amended complaint and the exemplified copy thereof, which had been marked for identification Exhibit No. 8.

The plaintiff objected to the admission in evidence of the record, proceedings, and decree of the district court, and also to Exhibit No. 8, upon the grounds following:

1. They are not sufficiently pleaded, and sufficient facts are not stated in the answer to render the proceedings or decree or any proof thereof admissible.

2. There is not sufficient proof of facts to show that the district court acquired or that it ever had jurisdiction to make the decree offered.

3. The proceedings do not show on their face that the district court had jurisdiction to render a decree of condemnation or forfeiture against any money belonging to the Bank of Georgetown.

4. The proceedings show on their face that the district court did not acquire or have jurisdiction to render a decree of condemnation or forfeiture.

5. The proceedings do not show that any binding or valid decree of condemnation or forfeiture was ever made or rendered by the district court.

6. The district court in or by the proceedings and decrees offered did not have or acquire jurisdiction of the person of the plaintiff, and

137 he did not appear personally or by attorney, and was not served with process in such proceedings.

7. The district court did not have or acquire jurisdiction of the subject-matter involved in this action.

8. The subject-matter involved in this action was not involved in the proceedings in the district court now offered, and the plaintiff is not thereby estopped.

9. The plaintiff in this action was not a party or privy of a party to the proceeding in the district court, and is not therefore estopped.

10. There are questions involved in this action which were not involved in the proceeding in the district court, and consequently the plaintiff is not estopped by the decree offered.

11. The record shows on its face that the district court did not have or acquire jurisdiction of any moneys belonging to the Bank of Georgetown.

12. The record of the proceedings offered shows that the district court did not seize or attach, take or condemn, any moneys deposited by the Bank of Georgetown.

13. The record show' that the district court did not have and had not had the rem named therein in its custody or presence when it pronounced the decree of condemnation offered, and therefore it had not jurisdiction to make that or any like decree.

14. The record does not show that the moneys proceeded against as belonging to the Bank of Georgetown had been seized by executive authority, or otherwise, before the proceedings in the district court were taken, and therefore does not show that the district court had or acquired jurisdiction to condemn the same.

15. The record offered shows that no executive seizure of the property proceeded against was made before the filing of the information,
138 and that the proceedings are therefore irregular and void, as being without the warrant of any law.

16. The district court could proceed against property on land for confiscation only on the common law side of the court in rem, while the record offered is a strict admiralty proceeding in rem, and is therefore wholly void.

17. The proceedings in the district court were by libel of information and monition; they should have been by information, warrant, and citation; the decree offered is therefore void because preceded by no lawful process.

18. The proceedings are void for the reason that the property proceeded against was on land and the proceeding should have been as nearly as possible like proceedings in revenue cases, whereas the government did proceed on the instance side of the court as in admiralty causes.

19. The decree of forfeiture offered is void for the reason that the libel of information does not charge that the causes of the forfeiture "were contrary to the form of the statute or statutes of the United States in such cases provided, as required by the 22d admiralty and prize rule of the United States Supreme Court."

20. The proceedings offered are irregular and void for the reason that they do not show that the district court proceeded to hear and determine the cause ex parte and adjudge thereon according to law after the default, as required by the 89th section of the act of the Congress of March 2, 1799 (1 Stat. at L., 696), respecting forfeiture, and the 29th admiralty rule of the Supreme Court.

21. The decree of forfeiture offered is void for the reason that the proceedings on which the same is based do not contain any findings that the money in question belonged to the Bank of Georgetown, nor

139 to any one liable to the penalties of the confiscation acts, nor any fact by reason of which it could be forfeited to the United States at all.

22. The decree and all the proceedings offered are wholly void, for the reason that the confiscation laws on which the decrees are founded have no reference or application to corporations like the Bank of Georgetown, and the term person as used in those acts does not include corporations, and neither of the confiscation acts makes the property of artificial persons confiscable.

23. The record offered is irregular, and the decrees offered void, for the reason that no trial by jury was ordered or had upon the allegations of the libel of information.

24. The record offered is irregular and void, for the reason that it does not show that the property proceeded against was advertised or sold according to law, nor as directed by the court.

25. The record offered is irregular and void, for the reason that the writ of venditioni exponas was issued February 24, 1865, and was made returnable February 14, 1865, and was actually returned on the 26th day of January, 1865.

26. The record offered does not estop the plaintiff, and is no defense to the action, for the reason that the decree does not run against credits of the Bank of Georgetown, nor against a debt due it by the Phenix Bank; but it runs only against specific moneys said to belong to the Bank of Georgetown.

The court sustained the objection and refused to admit the record and decree of the district court in evidence; and the defendant duly excepted.

The record and decree appear in the back part of this book under the head of "Exhibits offered in evidence and excluded."

140 NEW YORK, *January* 15*th*, 1878.

DAVID T. CORBIN, a witness called on behalf of defendant, being duly sworn, testifies:

By Mr. VAN WINKLE:

Q. Where do you reside?

A. Charleston, South Carolina.

Q. How long have you resided there?

A. Since the winter of 1866.

Q. What is your occupation?

A. I am a lawyer by profession.

Q. Have you ever occupied any official position under the United States in South Carolina; and if so, when?

A. I was United States district attorney for South Carolina from 1867 until last March.

Q. Do you know David Risley?

A. I do.

Q. Have you had much to do with him?

A. I have had considerable to do with him officially.

Q. As district attorney?

A. Yes, sir.

Q. In what way?

(Objected to; objection sustained; defendant excepted.)

Q. Do you know what his general reputation for truth and veracity is, or was?

(Objected to; objection sustained; defendant excepted.)

Q. Do you know what his general reputation is for truth and veracity?

A. No, sir; I do not know what it is now; I knew what it was in 1868, 1869, 1870, and 1871, very well.

Q. What was it?

(Objected to, on the ground that the proper foundation had not been laid for the question; objection sustained; defendant excepted.)

Q. Do you know what the general reputation of Mr. Risley is, or was at the time you mention, for truth and veracity?

A. I did.

Q. Will you state what it was?

A. It was very bad.

Q. Would you believe him under oath?

A. I would not on that reputation as I knew it to be then.

Q. What do you know of it since, anything?

A. I have had little or nothing to do with him or the people of Georgetown since.

141 Q. Do you know anything of it since?

A. No, sir; I don't know that I do, particularly.

Cross-examined by Mr. BEEBE:

Q. You have had the honor to be elected United States Senator by the legislature of South Carolina, had you not, or claimed to be?

A. That is what is claimed at the present time.

Q. You were a candidate against Mr. Butler before the Senate?

A. No, sir; he was not a candidate at the time I was.

Q. I mean before the Senate of the United States?

A. Oh! yes, sir.

Q. Mr. Butler was elected or seated as Senator, and you were not?

A. Yes, sir.

Q. You didn't get the seat as Senator?

A. The matter has not been definitely settled yet.

Q. Was there any charge against you that you had expended $40,000 in buying the legislature?

(Objected to; objection overruled; defendant excepted.)

A. Never has been any such made that I know of.

Q. There never was any such charge made against you?

A. No, sir.

Q. Or any other sum that you were charged with buying the legislature of South Carolina with?

A. Very recently there has been a charge made by some newspaper writers that I had purchased the legislature for $20,000, or something of that sort.

Q. Have you ever been indicted?

A. No, sir.

Q. There is no indictment pending against you now?

A. Not that I am aware of.

Q. Have you been charged with taking $25,000 from Mr. Cardozo, in relation to some railroad matter?

A. Speak a little more definitely.

Q. $25,000 belonging to a railroad company that was sold to the State?

A. No, sir.

Q. You have not been charged with that?

A. No, sir.

Q. You have not heard of that?
A. No, sir; no railroad that was sold to the State.
Q. Have you not been charged with taking $25,000 in connection with some railroad?
A. I have been charged in the newspapers recently with obtaining some money that I had recovered from a phosphate company, but not a railroad company.
142 Q. When you went to Charleston, where did you go from?
A. I went from Boston harbor, where I was on duty as an officer.
Q. What position did you hold?
A. I was captain in the United States Army.
Q. And you went from there to be district attorney?
A. No, sir.
Q. How long had you been captain in the United States Army?
A. About six years.
Q. How old are you now?
A. I am forty-three, sir.
Q. What had you been previous to being captain in the United States Army?
A. I had been a lawyer.
Q. Where?
A. In Vermont.
Q. When did you cease to act as a lawyer until you went to South Carolina?
A. I enlisted in the army in May, 1861, and was elected by the company I recruited.
Q. Had you been practising law before that?
A. Yes, sir.
Q. How many years?
A. Two or three years.
Q. How old were you in 1861?
A. I was about seventeen years younger than I am now.
Q. That makes you about twenty-four?
A. Seventeen from forty-three.
Q. Makes how much?
A. About twenty-six years old.
Q. Have you ever been personally acquainted with Mr. Risley?
A. I have.
Q. Where did he reside?
A. He resided at Georgetown, South Carolina.
Q. How far is that from Charleston?
A. About eighty miles.
Q. Do you know what his business was?
A. Yes, sir; he was a merchant.
Q. Carrying on the lumber business?
A. I don't know that that was a branch of his business.
Q. Do you know what his business was?
A. I know he was engaged in merchandizing generally?
Q. Did you ever see his store?
A. Yes, sir.
Q. What street was it in?
A. I don't remember the street.
Q. How many times have you seen his store?
A. Two or three times; I have been in Georgetown two or three times in my life, and I have had his store pointed out.

Q. Did you ever go in his store?
A. No, sir.
Q. Did you ever see him in his store?
A. No, sir; I went to Georgetown after he left.
Q. I didn't ask you that; when I ask you that, answer it, and not before; Mr. Senator, what year did you see his store?
143 A. I saw his store where he had kept in 1873 and 1874, when I was in Georgetown.
Q. That is after you ceased to know anything about him; it was after you swear you had no acquaintance with his general character?
A. I went to Georgetown and didn't see Mr. Risley there, or make inquiries about him, or have anything to say to him then.
Q. I want to know when first it was that you saw a store which was pointed out to you as his store?
A. It was in 1873 or 1874 I went to Georgetown.
Q. Had you ever seen it before or since?
A. No, sir.
Q. What was the business carried on there; what kind of a store did it seem to be?
A. I don't think he was interested in the store; you asked if I saw the building; I saw it when I was there in 1873 and 1874, but didn't go into it.
Q. You didn't know what his business was in 1868 and 1869?
A. I knew what his business was, because he told me.
Q. Did you ever of your own knowledge know what his business was before 1871 or at any time since?
A. No, sir; I had not been to Georgetown until 1873.
Q. Did you ever see Mr. Risley in Charleston?
A. Yes, sir; a great many times.
Q. You and he had a little trouble together, didn't you?
A. No, sir.
Q. Never had any trouble together?
A. No, sir.
Q. No unpleasant words or anything of that kind?
A. Not that I recollect of.
Q. He didn't charge you with being a carpet-bagger?
A. No, sir; nothing of that kind; not to my face; he may have charged me at my back.
Q. When were you in Charleston last?
A. I left Charleston last June.
Q. Ever been back since?
A. No, sir; I was abroad in Europe last summer.
Q. When did you return?
A. I returned at the meeting of Congress.
Q. Have you any family in Charleston?
A. No, sir.
Q. Anybody there belonging to you?
A. Yes, sir; I have a brother-in-law there.
Q. Have you ever been back there since you left it last June?
A. No, sir; I have been at Washington.
Q. Have you kept away from there because you were afraid of being arrested?
A. No, sir.
Q. You have ceased to be a resident there?
A. No, sir.
Q. You are still a resident there?

144 A. Yes, sir; and own a large amount of property there.
Q. When did you return from abroad?
A. I returned from abroad at the meeting of Congress.
Q. When was that?
A. In the middle of October—about the 20th of October, I think.
Q. When was it that Mr. Butler was elected?
A. He never was elected, in my judgment.
Q. I mean took his seat?
A. He was seated just before the adjournment of the special session.
Q. What time was that?
A. It was the latter part November.
Q. Have you any business in Charleston now?
A. Yes, sir; I am a lawyer.
Q. Your office is there?
A. Yes, sir.
Q. You have your business there as a lawyer?
A. Yes, sir.
Q. Have you a partner?
A. Yes, sir.
Q. What is his name?
A. I have not a partner now.
Q. When did you cease to have one?
A. This fall.
Q. Have your clients inquired after you since last June?
A. I presume they have, very extensively; I have a very extensive law business.
Q. And yet you don't attend to it?
A. I have other lawyers attending to it.
Q. But you don't attend to it?
A. I don't attend to it now.
Q. Have you had any curiosity about going back there to look after your business?
A. I have the curiosity of a man who has a large business and has other men attending to it for him.
Q. You have not been there since Mr. Butler was admitted to a seat in the Senate?
A. No, sir; not at all.
Q. I want to ask you if the South Carolina legislature have not reported upon the evidence of your witnesses that you bought your election to the Senate?
A. No, sir.
Q. Have they not so reported?
A. Not unless they did it this morning.
Q. Are you quite sure they didn't do it in advance of that?
A. I never heard of it.
Q. You don't want to go back, do you?
A. I do want to go back in a few days.
Q. When do you expect to go back?
A. I am waiting for the contest in the Senate, in Washington.
Q. Is there any contest now?
A. Yes, sir; Mr. Butler was admitted on a prima facie case.
Q. Mr. Patterson is there, but very sick, is he not?
A. I don't know anything about that.
145 Q. Who did you ever hear speak of the character of Mr. Risley for truth and veracity; I want to know when you ever heard a man speak in relation to his character for truth and veracity?

A. I have heard Mr. Harriot, the collector of Georgetown, speak of his bad reputation and character for truth and veracity; also Mr. McCloskey, an old resident of Georgetown; and a deputy collector—I cannot remember his name. Mr. Harriot was collector of customs, and is now in Georgetown; Mr. McCloskey was a planter, a native of that country; I cannot remember, but I have heard of others.

Q. Do you remember any others?

A. I do remember a number of others, but I cannot recall their names; I remember those men particularly.

Q. Who is Mr. McCloskey?

A. Mr. McCloskey is a planter.

Q. Did you have him arrested for distilling illicit whiskey?

A. I think I did once.

Q. Didn't you more than once, for distilling illicit whiskey?

A. I think he was arrested for that, but he was not convicted, I think.

Q. You say Mr. McCloskey was a planter or a farmer?

A. Yes, sir; they call them planters or farmers.

Q. Where was he from—was he a resident there?

A. I think he was a native of that country; I am not acquainted with his history.

Q. You know nothing about him, except that you arrested him or caused him to be arrested; I don't mean that you performed the physical operation of arresting him; do you know anything about him except that he is a planter there or a farmer there, and that you arrested him?

A. He appeared to be a very nice gentleman as far as I saw.

Q. When was it that you had this conversation with Mr. McCloskey; when he was under arrest?

A. No, sir; I don't think so.

Q. I would like to know when it was?

A. Mr. McCloskey was frequently at Charleston.

Q. I want to know when it was you had this conversation with him that you have spoken of?

A. It was along in 1869, 1870, 1871, or 1872.

Q. That is a broad latitude.

A. It is seven or eight years ago.

Q. Can you not tell nearer than three years ago, when you talked with him about it?

146 A. He was in my office during that period quite frequently.

Q. Can you not tell nearer than three years when you had this conversation?

A. I should say it was 1871 or 1872.

Q. Can you bring it within two years?

A. I would not like to be positive about it.

Q. Is there anything on your mind that fixes the date?

A. No, sir; nothing except that I recollect about that period that Mr. McCloskey was in my office.

Q. Where did this conversation take place in regard to Mr. Risley's character for truth and veracity?

A. In my office in Charleston.

Q. In your office?

A. Yes, sir.

Q. Do you know what Mr. McCloskey's business was there then?

A. He was there to consult me on some law business and trouble he had.

Q. Was it to see you as counsel?

A. As counsel.

Q. And this statement was made to you as between attorney and client?

A. No, sir; it had nothing to do with the business in hand.

Q. Was that trouble with Mr. Risley?

A. I don't think it; I don't remember now precisely what the trouble was.

Q. Do you remember it was a little trouble between Mr. McCloskey and Mr. Risley?

A. I don't remember whether it was he or another merchant in town; I am not certain about that; I knew he had some law business and came to consult with me about it, and I recollect enquiring of him about Mr. Risley, and talking about Mr. Risley.

Q. Was it owing to any trouble between him and Mr. Risley that this conversation was had?

A. No, sir; I don't think it was owing to the trouble.

Q. Do you remember whether it was or not?

A. I am not very positive who that trouble was with, whether it was with Mr. Risley or not.

Q. You don't remember?

A. I don't remember positively; I am not certain.

Q. Will you tell me how the conversation commenced and who commenced it?

A. I inquired of Mr. McCloskey.

Q. You opened the conversation?

A. He came to see me and I inquired about the people of Georgetown.

Q. You opened the conversation about Mr. Risley?

A. I am not certain; maybe I did.

Q. Who opened the conversation?

147 A. Really I could not tell you; I don't know how it commenced, or how it arose.

Q. What was the first thing you do remember that was said?

A. I recollect asking him about the character of Mr. Risley, in Georgetown among his people, and he said his character was very bad for truth.

Q. Was that all?

A. Oh, no, sir; there was more or less conversation; that was the substance of it.

Q. That is all you can remember of it?

A. That is all I can recall. I have no doubt that he told me that a dozen times.

Q. That was your question, and as far as you can remember that was his answer?

A. Substantially that.

Q. What was his character among his neighbors, and he said very bad?

A. Yes, sir.

Q. Do you remember whether that was for cheating the revenue?

A. No, sir; it was his character for truth and veracity, general character.

Q. You didn't say anything about his general character for truth and veracity; you asked the question, what was his general character; have you any recollection, or anything to add to what you have stated before that you asked him, what his character was among his neighbors there, and he answered bad, very bad?

A. Yes, sir. I will state again in substance what I recollect it was.

I said to him that I had had a good deal to do with Mr. Risley officially, and asked him what sort of a character he sustained among his neighbors up there, generally, and he said very bad; that nobody believed him, and nobody could believe him; something of that kind.

Q. That has come to you now since?

A. No, sir; that is the substance of the whole business. I have not pretended to give any language that was used particularly.

Q. But you gave the substance of all you recollect, and the other was the substance of all that occurred?

A. If you asked me again, I presume I would give you other words.

Q. Another party, who was the first gentleman you named there?

A. Mr. Harriot.

Q. Who is he?

A. Mr. Harriot was the collector of the port, and has been for a great many years. I think he is so now. I am not positive about that; I think he is; and he was also health officer of the port under the
148 quarantine laws, appointed by the governor of the State.

Q. Of what port?

A. The port of Georgetown.

Q. How many conversations did you have with him on the subject?

A. I suppose Mr. Harriot has been in my office a dozen times, and was along about that time.

Q. What was the conversation you had with him about Mr. Risley's character for truth and veracity?

A. The conversations with him in reference to Mr. Risley were very much the same.

Q. When was that?

A. 1871 or 1872; along there.

Q. You cannot fix it into a year?

A. Some of those years.

Q. Where was that conversation?

A. In my office in Charleston.

Q. Did he come to consult you on professional business?

A. Yes, sir.

Q. Official or professional?

A. No, sir; private business.

Q. You seem to have had a great deal of interest in Mr. Risley?

A. I have had great occasion to know him.

Q. Was that conversation in your office?

A. Yes, sir.

Q. What time of the day was it?

A. I could not remember what time of the day it was.

Q. Who was present?

A. I should say no one was present.

Q. Will you say there was not?

A. I have no recollection of any one being present. I have a private room, and my clients come and see me there, the same as they do in your office, I suppose.

Q. Would you say whether there was or not?

A. I should say not. I have a distinct recollection of his being there; but my partner and my clerks are not allowed in my private office.

Q. What took place exactly between you and Mr. Harriot; can you remember?

A. Mr. Harriot came to my office; it is a long story.

Q. I am talking about Mr. Risley's character for truth and veracity.

I don't want anything that occurred outside of you and Mr. Harriot as to Mr. Risley's truth and veracity?

A. Mr. Harriot came to my office on professional business—his own private business—and I had long consultations with him frequently on it.

By the COURT:

Q. What conversation did you have with Mr. Harriot in regard
149 to Mr. Risley's reputation for truth and veracity, is the question you were asked?

A. In the course of the conversation I said to him, "I have seen a great deal of your townsman, Mr. Risley, here; what have you got to say about him? What sort of a man is he?" He said, "He is a very bad man; a very bad man, indeed; nobody can believe anything he says;" and said a great deal about him; in fact he spoke very bitterly about him.

By Mr. BEEBE:

Q. He said he had trouble with him?

A. I think he told me he had trouble with him.

Q. Where was Mr. Harriot from?

A. Georgetown.

Q. Where did he come from?

A. He is a native, I think, of South Carolina. I know he told me he was a native of that State. I have always understood that to be true; whether he was a native of Georgetown or not I am not certain.

Q. How long had you been acquainted with him?

A. Since 1868, I should think, or 1869.

Q. Do you know anything about Mr. Harriot's domestic relations, whether he and his wife are separated?

A. I do not.

Q. Your professional employment didn't relate to that?

A. No, sir; it related to property.

Q. Did this trouble, so far as Mr. Harriot was concerned, spring out of some trouble about the revenue between him and Mr. Risley?

A. I cannot remember exactly what the trouble was between them.

Q. Did you make any memorandum of it?

A. No, sir.

Q. Have you ever thought of it since until you were on the stand?

A. I have thought of it since this morning for the first time.

Q. I mean until you came here to to court?

A. No, sir; not until I came here.

Q. When were you spoken to to come here?

A. I was telegraphed to to come here on Saturday night.

Q. From where?

A. From Washington.

Q. Were you in court yesterday?

A. No, sir.

Q. Did you know, when you came here, what you came about?

A. No, sir. I had not the slightest idea about it. I didn't know the case.

Q. How did my learned friend, Mr. Van Winkle—venerable as
150 I am, and a little more so—know that Mr. Corbin knew anything about Mr. Risley?

A. You will have to ask him about that.

Q. Do you know?

A. I don't know.

Q. Nor how they came to send for you?

A. No, sir.
Q. It is a wonder they didn't send for Mr. Patterson.
A. You can ask them about that.
Q. It is a matter of taste, I suppose?
A. Yes, sir.
Q. Who was the other man?
A. I said the other one was a collector of internal revenue. I could not recall his name.
Q. Where is he located?
A. I don't know now; he was deputy collector of Georgetown or assistant assessor; he was either a deputy collector, or assessor; I am not positive which.
Q. Where did you se' him?
A. He came to my office in Charleston.
Q. When was that?
A. 1871, 1872, or 1873; somewhere along there.
Q. Did he have professional business with you, or was that official?
A. I don't remember; I think very likely he came to my office to report some matter from Georgetown; the revenue officers usually visit my office when they come to Charleston.
Q. Do you remember what brought about this conversation between you and the deputy collector or assessor whose name you cannot remember?
A. I cannot remember just now what brought it about, but I recollect it very well, because I was so much interested in Mr. Risley.
Q. I only want to know if you recollect what brought it about; was it again your personal curiosity?
A. I think mainly that.
Q. Do you remember, really?
A. If you will allow me a word of explanation I will tell you.
Q. I don't want you to state anything about general matters.
A. No, sir; I won't state anything about Mr. Risley at all; I had had so much to do with Mr. Risley that I was in the habit of——

By the COURT:

Q. Did you feel an interest in him?
A. No, sir.
Q. You have already said you did?
A. No, sir; I don't think I said that. I felt a great interest in Mr. Risley, but not personally; I didn't mean to say that, if I said it;
151 what I mean to say is this, that I had so much to do with him that I was in the habit of asking people that came to my office from Georgetown what kind of a man Mr. Risley was, and that is frequently the way the conversation commenced.
Q. And that is the way the conversation was started with all these people?
A. Substantially so.

By Mr. BEEBE:

Q. Had you ever examined Mr. Risley as a witness?
A. No, sir. I did not have him as a witness.
Q. Had you ever examined him as a witness?
A. No, sir. I don't think so.
Q. Had you ever attempted, in Charleston, South Carolina, to impeach him?
A. No, sir. I tried to convict him.
Q. Did you ever try to impeach him?

A. No, sir.

Q. You never heard a witness swear against him in any way, did you?

A. No, sir.

Q. We have not yet got what was said between you and this unknown internal revenue officer—call him Richard Roe?

A. Yes, sir; or John Doe. He told me that his reputation was very bad, and he was a very bad man.

Q. You asked him about David Risley?

A. Yes, sir.

Q. And what did he say?

A. He said his character was very bad; he was a very bad man, and could not be believed, and was an unreliable man.

Q. Did he say he had any trouble with him?

A. No, sir.

Q. All this was growing out of your official relation to Mr. Risley?

A. I asked these questions before I had so much to do with Mr. Risley as district attorney.

Q. If you had had so much to do with Mr. Risley for the year you were there, as district attorney, why can you not tell me what business he was in?

A. I only know that by his own admissions to me; he was in general merchandizing, and was importing goods from Cuba and foreign ports.

Q. What kind of goods?

A. Sugar and molasses.

Q. Did he import any cotton?

A. No, sir; I don't think there was anything of that kind on the invoices.

Q. Do you know that he was dealing in lumber?

A. I have heard he was.

152 Q. How many importations of treacle or sugar did you ever know of his making?

A. I had information of five or six cargoes that he imported. I am not positive of the number; something like that.

Q. During the year you were there?

A. No, sir; the importation took place in 1865 or 1868.

Q. And your inquiries were in 1871 or 1872?

A. Those conversations I refer to.

Q. They were inquiries on your part; they were to gratify your own personal curiosity?

A. You have asked me that half a dozen times.

Q. Is your family in South Carolina now?

A. No, sir; I have no family; my wife is dead.

Q. Where is your office in Charleston?

A. My office is on Meeting street, just below Broad.

Q. Is it kept open for the transaction of business?

A. The present district attorney has an office in my office, and is allowed to use it at present.

Q. What is his name?

A. Northrup.

Q. Is he a native of Charleston?

A. I think he is.

Q. How long have you known him?

A. I have known him since 1866 or 1867.

Q. Have you made any effort to get back to Charleston since you left there in June?

A. No, sir. I could have got there if I tried; the way is open. I

have been detained in Washington in connection with this contest, and I have not been home. I have no occasion to go home.

Q. Is the effort to unseat Mr. Butler?

A. The question before the Senate is between Mr. Butler and I.

Q. And that will bring up the charges about purchasing the legislature?

A. I trust it will.

Q. Are there any folks in Washington from South Carolina besides you?

A. I should think there were *were* several of them.

Q. You have seen them from South Carolina?

A. You mean just at this moment?

Q. I mean now, to-day, yesterday, or any time. Are there folks there from South Carolina?

A. Yes, sir. I saw Mr. Bligh, from Greenville, a lawyer.

Q. Mr. Butler is there?

A. I don't think I saw Mr. Butler on Saturday.

Q. There are plenty of South Carolina folks in Washington?

A. I don't know; I believe that all the members from South Carolina are in the House, or are there.

153 Q. About how large a town is Georgetown; how many inhabitants?

A. I should say from five hundred to a thousand.

Q. You never lived in Georgetown, did you?

A. No, sir. I have never been there but twice.

Q. Who called upon you to come here?

A. These gentlemen sent for me.

Q. By a telegram?

A. Yes, sir.

Q. Do you always come in answer to a telegram?

A. Some times I do, and some times I don't; it depends on who sends it, and what it is about.

Q. Did the telegram explain what it was about?

A. I didn't know when I came here what I was to testify about?

Q. And yet, because they telegraphed you, you came?

A. Yes, sir.

Q. Anything said about expenses?

A. I am not sure.

Q. Upon a telegram, without knowing what you came here for, you came?

A. No, sir; the telegram, as near as I remember, asked me to come here to be a witness in a case that was pending, and to be here on Monday morning; that was about the substance of it.

Q. That is all you know about it, and that was the substance of that telegram; and on that you left Washington and came here?

A. Certainly.

Q. Were you ever waited upon by a detective?

A. When?

Q. About this matter?

A. No, sir.

Q. You were never waited upon by a detective and asked to come on here?

A. No, sir.

Redirect:

Q. You stated that the interest you felt in the affairs of Mr. Risley, or in Mr. Risley, was an official one?

A. Entirely.
Q. How did that arise?
(Objected to; objection sustained; defendant excepted.)
Q. Was he under indictment?
(Objected to; objection sustained; defendant excepted.)
Q. Have you any interest in this controversy?
A. None whatever.

Q. Do you know what business Mr. Risley was engaged in at
154 all, apart from the store in Georgetown?

A. I do not.
Q. Do you know what business general reputation assigned him to?
(Objected to; objection sustained; defendant excepted.)
Q. You merely know that his general reputation for truth and veracity was bad?
(Objected to; objection sustained; defendant excepted.)
(Defendant rested.)

The foregoing being all the evidence taken on the trial, the court charged the jury as follows:

The court, in charging the jury, said:

GENTLEMEN OF THE JURY: Although the trial of this case has occupied a considerable length of time, the question which is to be submitted to you for your consideration is embraced within a very small compass, and there is very little testimony relating to that question. Considerable time has been taken up by both of the counsel in their discussion before you, and also in the discussion before the court upon the questions of law which arose in the progress of the trial in regard to certain circumstances attending this transaction, with which you have nothing to do. Your attention has been called to the fact that, as far as the Phenix Bank is concerned, it has been claimed upon their part that they have paid their money under the lawful authority of the United States to the United States. Now, gentlemen of the jury, I have already stated in your hearing the reason why that fact is not so. It is a very nice question of law, upon which I may be mistaken; but I have an opinion about it, and as, according to that opinion, it seemed to me that it was necessary that these proceedings should be shut out, you have nothing to do with anything in regard to those proceedings. I applied the rule of law, holding that the proceeding under the confiscation act being for the purpose of depriving a man of his property, must be proceeded with according to the terms of the act, and as
155 those terms have been expounded by the court in order that a man may be deprived of his property, and there are no intendments in favor of proceedings of that description. The proceedings in this case, as I have already said, did not comply with the terms of the statute, they did not confiscate the credit. There was no money belonging to the Georgetown Bank in the Phenix Bank. There was a debt due from the Phenix Bank to the Georgetown Bank, and that debt was never confiscated, and as a result, the Phenix Bank, in paying over the money in the way they did, have acted in their own wrong, and as far as the Georgetown Bank and Mr. Risley are concerned, they have a claim against the Phenix Bank for the amount of this money, the same as if this proceeding had never been instituted.

Now, gentlemen of the jury, considerable has been said in regard to outside transactions which have nothing whatever to do with this case, and I desire to call your attention very briefly to the testimony in regard to this case, and to the simple question which you were called upon to

pass. There are some conceded facts in this case, gentlemen, and to those I will call your attention, and then bring your attention to the conflict of testimony. It is admitted that for a considerable period of time prior to 1861 the Bank of Georgetown had a correspondent in the city of New York, and that that correspondent was the Phenix Bank. It is conceded the Bank of Georgetown had on deposit with the Phenix Bank a considerable sum of money, and, in 1861, that amounted to about the sum of $18,000. It is conceded that that money remained on deposit, or the majority of it remained on deposit, and that during the year 1864 some amounts of that money were drawn from the Phenix Bank upon checks drawn by the Bank of Georgetown. It is further conceded that on the 1st of January, 1865, the Bank of Georgetown had on deposit to its credit with the Phenix Bank the sum of a little over $12,000. It is conceded that, on the 4th of January,
1865, Mr. Risley appeared in the Phenix Bank; that he presented
156 the check or order which has been called to your attention during the trial, and that he demanded its payment. It is conceded that the bank told him the money was there, and that the check was good, that it was a genuine check, and that they told him the check would be paid on his being identified; that he being an entire stranger and the check being payable to his order, it was the ordinary precaution which all banking institutions must necessarily require. It appears that he called on the 5th of January, and that the Phenix Bank refused to pay, claiming the money had been seized by the United States. Now, gentlemen of the jury, this case, it appears, was on trial before Mr. Nicoll, as referee, and that Mr. Risley was examined upon that trial. It appears that before that trial was completed the order of reference was vacated, and the case came up afterwards on trial before the court. It further appears that, on the trial before the court, no witnesses were examined, but a naked question of law was presented to the court, and that question of law went to the general term, and it is proper I should call your attention to the proposition which went before the general term, in order to explain to you very briefly what the general term decided in regard to this transaction. It was claimed upon the trial that it could be proved, and the defendant said: "What of it if it is proved?" for the purpose of raising the legal question, they say: "We admit it, because we don't think it makes any difference," and the court seemed to think so, for they dismissed the complaint. It was claimed it could be proved that on the 20th of May, 1861, for a valuable consideration, by an oral agreement, the Bank of Georgetown assigned and sold the indebtedness due to the Bank of Georgetown from the defendants, to the extent of $10,000, and gave the plaintiff the check above referred to. Now, gentlemen of the jury, it was claimed by the counsel for the defendant upon that trial that the plaintiff in this action had no
157 cause of action upon the check, because it was nothing but a draft, or bill of exchange, and no cause of action would arise against the bank for that check, unless the check had been accepted in writing. They further claimed, if that were so, that the plaintiff had no cause of action whatever; because the oral agreement by which the Bank of Georgetown sold or assigned $10,000 of this fund, conveyed no title to any portion of this fund to Mr. Risley, and that he could not maintain his action upon that ground either. Those were the propositions, as I understand it, which went up before the court. The court held that no cause of action whatever could be maintained upon the part of Mr. Risley, because of the holding of this check, because they held that the cases decided that the check was nothing but

a bill of exchange, or draft, and without an acceptance in writing no cause of action would arise in favor of the holder of the check against the bank upon which the check, or draft, or bill of exchange was drawn; but they held that it was possible upon the part of the plaintiff to maintain his action if he was able to show that there was a parol agreement by which there was assigned to him a distinct $10,000 out of this fund, and that is the question you are called upon to determine, whether from the evidence in this case you are satisfied there was a distinct transfer and assignment by the Bank of Georgetown to Mr. Risley, of $10,000 of this fund. I shall charge you, as a proposition of law, that if you find, upon the evidence in this case, there was such an assignment under the instructions which I shall give to you, that the plaintiff in this action is entitled to a verdict.

Now, gentlemen of the jury, what is the evidence in regard to that matter? Mr. Risley swears that he went, having some business with the Bank of Georgetown, for the purpose of paying an indebtedness; Mr. Risley living in Georgetown; that he had some conversation, either with the cashier or president, I forget which, in which the officer
158 of the Bank of Georgetown spoke of the fact of its having on deposit the sum of $18,000 or $19,000 in the Phenix Bank; that that officer of the bank stated in consequence of the condition of affairs (this was on the 20th of May, 1861), he was afraid to allow that sum of money to remain there, for fear it might be lost, and he wanted to sell to Mr. Risley, as Mr. Risley states, the whole of that claim for a named price. Mr. Risley says he offered him fifty cents on the dollar for it, and that that was refused on the part of the bank, and finally he offered to pay him in Southern notes for $10,000 of it, dollar for dollar; that is, a dollar of Southern currency for a dollar of this indebtedness in New York; that he would buy $10,000 of it at that rate, and that his offer was there accepted, and that he thereby became the owner of $10,000 of this claim. He further says that at that time a check was drawn—the check which has been introduced in evidence before you, or a copy of it—and handed to him.

Now, gentlemen of the jury, what is claimed in regard to this matter on the part of the defendant? They claim that from the transaction itself, and from the testimony which had been given by Mr. Risley before the referee, that it is not possible for you to believe that statement on the part of Mr. Risley, and also in regard to what took place at the Phenix Bank, which I will call your attention to hereafter. They claim that upon his testimony before Mr. Nicoll, the referee, Mr. Risley did not state any facts in regard to his having any assignment of this claim or any transfer of any sum of money. In regard to this claim, they claim that in considering his testimony in this case you are to determine this question in view of that contradiction, and also of the contradiction to which I will call your attention hereafter—they claim that this question in regard to this oral assignment or transfer was an afterthought, and that Mr. Risley's statement in that regard was infused into the case after it became necessary such a proposition should be sustained in order that the case might be brought within
159 the ruling of the general term. Upon the other hand, the counsel for Mr. Risley says that that is manifestly unjust and untrue, for the reason that in the original complaint it was stated as one of the causes of action, that there had been an express assignment of $10,000 of this claim. Gentlemen of the jury, those are considerations for you to bear in mind when you consider the testimony in this case in regard to this transaction; now, gentlemen of the jury, as I have already said,

Mr. Risley claims that at this time he bought $10,000 of this claim and received this check. Here is a point to which I will now call your attention. If, gentlemen of the jury, you find, as I have already said, from the evidence in this case, that there was a distinct agreement between him and the officers of the Bank of Georgetown, that he was to have $10,000 of this fund, the general term of this court have decided that that was a valid transaction, and that he would have a right to recover. If, upon the other hand, you find that nothing of that kind took place, but that Mr. Risley merely paid his money for this check, that that was what he paid this money for, and not for the transfer or agreement of the Bank of Georgetown to assign in consideration of that $10,000 this amount in this claim; but, if he merely paid his money for the check, and that is all he got, and there was no statement in regard to any transfer of $10,000 of this fund, then in that case the defendant would be entitled to a verdict. That is the proposition you are to bear in mind. If you find as a fact that this conversation took place between the Bank of Georgetown and Mr. Risley, and that there was a distinct buying of $10,000 of this fund, then Mr. Risley would be entitled to a verdict at your hands. But if you find the $10,000 was paid for this check, and that alone, then the defendant would be entitled to a verdict. You get the distinction. The courts have decided he cannot recover upon the check—that he cannot recover against the Phenix Bank on the check, because the Phenix Bank never accepted it.
160 Therefore if it was the check he bought for $10,000 there cannot be any recovery. But if you are satisfied, from the evidence in the case, that he bought $10,000 of this claim of the Bank of Georgetown, and that this check was only given as evidence of that fact, then the plaintiff would be entitled to recover. Now, gentlemen of the jury, we come down to the 4th of January, 1865. Mr. Risley swears that he came into the Phenix Bank on that morning, and that he saw Mr. Bryson, if I recollect right; that he had a conversation with Mr. Bryson; that he presented this order, or check, or draft, and that Mr. Bryson examined it and pronounced it good, and said the money was there, and he would pay it; and Mr. Risley further swears he told Mr. Bryson at that time that the Bank of Georgetown had transferred this $10,000 of this claim to him, and he wanted him to hold the money for him. Now, gentlemen of the jury, it is important that you should bear this in mind, because upon this question depends the date from which you are to calculate interest. He further swears he came there the next day, January 5th, and he testifies further, if I mistake not, that he saw Mr. Bryson again, and he had some conversation with Mr. Bryson as to why he refused to pay the check, and that Mr. Bryson told him the money had been seized by the United States Government, and consequently they could not pay it. Now, on the part of the defence, Mr. Bryson has been examined, and he states that he never had any conversation with Mr. Risley at all in regard to this matter. Mr. Parker comes on the stand and says he saw Mr. Risley on the 4th of January and on the 5th of January, and that Mr. Bryson was not present at either of these conversations. He swears that no notice whatever was given of any transfer by the Bank of Georgetown of any specific $10,000 of this fund, but that all the conversation that took place between himself and Mr. Risley was in regard to this check, and Mr. Risley presented the check; that he told him Mr. Parker examined the check, and said it was a good check, and they had the money there, and he would
161 pay the check as soon as Mr. Risley was identified. As far as that portion of the conversation is concerned it is substantially

the same as testified by Mr. Risley, with the exception of the fact that Mr Risley swears it was with Mr. Bryson, and Mr. Parker swears it was with him. Now, gentlemen of the jury, it is claimed, on the part of the defendant, that in consequence of this conflict in regard to the personality of these individuals, Mr. Bryson and Mr. Parker, you cannot place any reliance upon the testimony of Mr. Risley; that is a question entirely for you, gentlemen, to consider, as to whether that mistake in the identity of the persons is one which would be natural to make, or whether it is one which could not possibly be made on the part of Mr. Risley with good faith, and that it was made in consequence of an attempt on his part to infuse into his case certain elements which had not their existence in verity and truth. Then, gentlemen, we come to the question in regard to Mr. Corbin's statement in regard to Mr. Risley's character. We find that Mr. Corbin has come on from Washington to testify in this case, and he has testified to you that he is acquainted with the general reputation of Mr. Risley for truth and veracity, and he says it is bad, and he would not believe him under oath. He says the ground of that reputation is based upon the fact that three individuals told him so. Now, gentlemen of the jury, it is somewhat difficult to understand, where a man is living in a community, how his general reputation can be made by the opinions of three individuals. It is not a question as to whether Jones, Smith or Brown believes thus and so, but whether it is his general character among his friends and acquaintances. That is what constitutes general reputation. It is not that one man, or two men, or three men should say they won't believe a man under oath, or have said so. The only way in which a man's testimony can be impeached is by evidence of the fact that his general reputation is such among the community in which he lives. Of course in a community like the city of New York, it is very difficult to
162 impeach a man on those grounds, because it is so difficult to get at his general reputation in a place where there are so many people living. But in a small country place, every man knows every other man's character in the same town, and they are very apt to talk about it if it is bad, but if it is good they never say anything about it. I have often had the question asked when they came to impeach a witness, where two or three men would swear his reputation was bad, and others would swear they never heard it questioned, such evidence would be objected to, on the ground that he had no general reputation showing his character to be good. A man's good deeds are very seldom spoken of, but his bad deeds are always heralded abroad. Therefore, in considering the question of impeachment, you must determine whether the evidence comes up to the rule. If, gentlemen of the jury, you find from the evidence in this case, which Mr. Corbin has given, that Mr. Risley's reputation is bad among the people in the community in which he lives, among the persons with whom he circulated, and would be apt to know what his reputation was, then his testimony is successfully impeached, and you have a right to reject the whole of his testimony; or if you find from the evidence offered that Mr. Risley has knowingly testified to any fact which he believed to be important in this case falsely, you have a right to reject his whole testimony in regard to those points of the case in regard to which there has been no contradiction. Now, gentlemen of the jury, as I have already said before, the questions in this case are embraced within a very small compass, and the question you are to determine is whether there has been any oral agreement of transfer between the Bank of Georgetown and Mr. Risley of this $10,000 independent of that check. As I have already said, he

cannot recover on that check; they must establish an agreement independent of that check, and if they have established that there was an agreement independent of the check then the Phenix Bank is
163 liable in this action. If you find in favor of the plaintiff, you must consider whether the Phenix Bank had notice of the assignment. If you believe Mr. Risley's statement, that he notified the bank on the 4th of January, that he had this transfer independent of the check, and told them to hold the money for him, and he made the demand on the 5th of January, then he is entitled to interest from that time on the $10,000. If, however, you find no such notice has been given, but you do find there was an assignment between the Bank of Georgetown and Mr. Risley, then Mr. Risley would be entitled to interest on $10,000 from the time of the commencement of this suit in 1867. I don't know, gentlemen of the jury, that there is anything more that I need to say to you on this question. It is a question of fact for you to consider upon the evidence; you have the evidence before you, and it is for you to determine from the evidence as to whether he has established the fact that there was an arrangement and an agreement to transfer, and an oral assignment of that portion of this claim, as has been testified to by him.

Mr. CANDLER. We ask your honor to charge the jury, that no cause of action upon or growing out of the check mentioned in the amended complaint against the Phenix Bank of the city of New York has been shown, as that bank did not accept or certify the check in writing.

The COURT. I have so charged.

Mr. CANDLER. No oral promise or promise not in writing by the Phenix Bank to pay such check was valid or binding upon the bank, and the plaintiff cannot recover on any such promise.

The COURT. That is already charged.

Mr. CANDLER. If the jury find that the check was inseparably connected with the alleged assignment and sale mentioned in the amended complaint, and that the whole claim rested solely upon the drawing and delivery of the check, the plaintiff cannot recover.

The COURT. I so charge.

164 Mr. CANDLER. If the Bank of Georgetown did not sell and assign to Mr. Risley the whole of its claim against the Phenix Bank, then the sale and oral assignment were void.

The COURT. Refused, and exception.

Mr. CANDLER. If David Risley did not accept and receive on the 20th of May, 1861, the evidences, or some of them, of the said claim in addition to the check, such, for instance, as the accounts or letters sent by the Phenix Bank of the city of New York to the Bank of Georgetown pursuant to a clear and distinct understanding of the agreement then had and made between the Bank of Georgetown and David Risley for the sale and assignment from such bank to him of such claim, the jury must find that there was no valid sale or assignment by the Bank of Georgetown to him of the said claim of $10,000, and the plaintiff cannot recover.

The COURT. Refused.

Mr. CANDLER. And we except. The plaintiff being a resident of the State of South Carolina on the 20th of May, 1861, and in August, 1863, and the Bank of Georgetown being a resident and inhabitant of that State at those times, and while the inhabitants of that State were in a state of insurrection against the United States of America, the drawing and delivery of the check mentioned in the amended complaint,

and the making and delivery of the sale and assignment therein alleged, were null and void.

The COURT. Refused.

Mr. CANDLER. We except. That all the verbal negotiations between Risley and the Bank of Georgetown were merged in the written check, and no other cause of action against the Phenix Bank remained to Risley, and that such check not being accepted or certified, Risley cannot recover against the Phenix Bank.

The COURT. Refused.

Mr. CANDLER. We except. That to complete the transfer of a chose in action, a claim for money by word of mouth, notice of it must
165 be given to the party to be charged or no cause of action arises, and that if no notice was given of the assignment to the Phenix Bank before suit brought, Risley cannot recover.

The COURT. Refused.

Mr. CANDLER. To that we except. I also except to that part of your honor's charge wherein you charge the Bank of Georgetown had no money with the defendant, but only a debt.

Also, to that part wherein you charge that if the jury find there was an oral assignment, the plaintiff is entitled to recover.

The COURT. Perhaps I may want to correct my language in regard to the relation of the Bank of Georgetown to the Phenix Bank. Gentlemen of the jury, what I meant to say when I said they had no money, was that they had no specific money; that is, that there was no particular $10,000 bound up in a package, which the Bank of Georgetown owned, but it had a right to a cause of action against the Phenix Bank for the amount which had been deposited, and which became a debt in favor of the Bank of Georgetown against the Phenix Bank. Now, I will repeat the question you are to determine, and that is, whether there was, independent of the check, an agreement of assignment and purchase and sale of $10,000 of this debt due from the Phenix Bank to the Bank of Georgetown by Mr. Risley on the 20th of May, 1861. If there was, then he is entitled to recover. If he merely bought the check, and paid $10,000 for this check, then he is not entitled to recover.

The jury rendered a verdict in favor of the plaintiff for the sum of $19,111.64.

Defendant's counsel asked that the jury be polled, which was accordingly done, and they each and every one declared that the above verdict was his verdict.

Defendant's counsel moved to set aside the verdict on the minutes of the court, on the grounds, first, that the verdict was against the
166 evidence; second, that it was contrary to the evidence; and, third, that it was contrary to law.

The court denied the motion, and the defendant excepted.

The following order was then made and entered:

At a circuit term of the supreme court of the State of New York, held at circuit, Part III, in the city of New York, on the 15th day of January, 1878.

Present, Hon. Charles H. Van Brunt, justice.

DAVID RISLEY
agst.
THE PHENIX BANK OF THE CITY OF NEW YORK.

The issues in this action having been brought to trial before the

court and a jury, and the jury having rendered a verdict for $19,111.64, and a motion having been made by Mr. Candler, of counsel for the defendant, upon the judge's minutes to set aside the verdict and to grant a new trial, upon the exceptions taken by the defendant. And because the verdict was contrary to the evidence—and because the verdict was contrary to law, and plaintiff's counsel opposing, it is now ordered that the said motion be and the same is hereby denied.

(A copy)
(S'd) HENRY A. GUMBLETON, *Clerk.*

The court granted defendant's counsel thirty days in which to make and serve a case with a stay of proceedings.

Afterwards, and on February 14th, 1878, judgment was en-
167 tered on the verdict in favor of the plaintiff agains tthe defendant for $20,583.16 damages and costs.

The defendant duly appealed from the order denying the motion for a new trial, and from the judgment, and filed and served the following notice of appeal:

N. Y. supreme court, city and county of New York.

DAVID RISLEY, PLAINTIFF, RESPONDENT,
against
THE PHENIX BANK, OF THE CITY OF NEW YORK, defendant, appellant.

Please take notice that the defendant in this action appeals to the general term of this court from the order made in said action at a term of the circuit court, part III of this court, on the 15th day of January, 1878, which denied the defendant's motion to set aside the verdict of the jury, and for a new trial on the judge's minutes, and also from the judgment entered in this action in favor of the plaintiff and against the defendant, on the fourteenth day of February, 1878, for twenty thousand five hundred and eighty-three dollars and sixteen cents damages and costs.

Dated February 14th, 1878.

Yours, &c.,

EDGAR S. VAN WINKLE,
Attorney for Defendant, Appellant, No. 48 Wall street, New York.

To Messrs. BEEBE, WILCOX & HOBBS,
Attorneys for Plaintiff, Respondent.

To HENRY A. GUMBLETON, Esq.,
Clerk of the City and County of New York.

Filed Feb'y 14th, 1878.

168 *Exhibits offered in evidence and excluded.*

DEFENDANT'S EXHIBIT No. 1.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

[SEAL.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas an information has been filed in the district court of the United States for the southern district of New York, on the 5th day of January, in the year of our Lord one thousand eight hundred and sixty-five, by E. Delafield Smith, esquire, United States district attorney,

on behalf of the United States of America and the informer therein mentioned against ($15,000) fifteen thousand dollars, more or less, belonging to the Bank of Georgetown, a corporation doing business at Georgetown, in the State of South Carolina, which said $15,000 is now in cash and is now on deposit in the Phenix Bank, a corporation doing business in the city of New York, for the reasons and causes in the said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said fifteen thousand dollars, more or less, may be cited in general and special to answer the premises, and all proceedings being had that the said fifteen thousand dollars, more or less, may, for the causes in the said information mentioned, be condemned as forfeited to the use of the United States and the informer mentioned:

You are hereby commanded to attach the said fifteen thousand dollars, more or less, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer
169 of the said information, that they be and appear before the said court, to be held in and for the southern district of New York, on the 24th day of January, 1865, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf, and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 5th day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of our Independence the eighty-ninth.

GEO. F. BETTS, *Clerk.*

E. DELAFIELD SMITH,
U. S. District Attorney.

(Endorsed:) Vol. 18, page 577. Southern district of New York, United States district court. The United States vs. Certain money on deposit in Phenix Bank, N. Y. City, belonging to the Bank of Georgetown, S. C. Monition returnable January 24th, 1865. E. Delafield Smith, U. S. attorney. Filed the day of , 18 . Served 5th January, 1865, 11.50 a. m.

170 DEFENDANT'S EXHIBIT No. 2.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, in the said district, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and sixty-five.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
CERTAIN MONEYS ON DEPOSIT IN THE PHENIX Bank of the city of New York, belonging to the Bank of Georgetown, of Georgetown, South Carolina.

The monition in this cause having been heretofore returned and the usual proclamation having been made and the default of all persons

being duly entered, it is thereupon, on motion of E. Delafield Smith, esq., attorney for the United States, ordered, sentenced, and decreed by the court now here, that his honor, the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree that twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars belonging to the Bank of Georgetown, of Georgetown, in the State of South Carolina, and now on deposit in the Phenix Bank of the city of New York, which said twelve thousand one hundred and sev-
171 enteen $\frac{38}{100}$ dollars, has been heretofore seized by the marshal in this proceeding, be, and the same is hereby, condemned as forfeited to the United States.

And it is further ordered, adjudged, and decreed, that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 14th day of February, 1865, and upon the return thereof, the marshal pay into the registry of this court the sum of twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, there to abide the further order of this court.

(Signed) SAMUEL R. BETTS.

A true copy.

GEO F. BETTS, *Clerk.*

DEFENDANT'S EXHIBIT No. 3.

Receipt at bottom of Exhibit No. 2:

Received New York, January 25th, 1865, from Phenix Bank, New York, the sum of twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, as set forth in the above decree.

$12,117\frac{38}{100}$.

[L. S.] ROBT. H. MURRAY,
U. S. Marshal.

DEFENDANT'S EXHIBIT No. 8.

The President of the United States of America to all whom these presents shall come, greeting:

Know ye that we, having inspected the records and files of the district court of the United States for the southern district of New
172 York, do find certain papers writings there remaining of record, in the words and figures following, to wit:

(Act of August 6, 1861, 12 Stat. at Large, 319; act of July 17, 1862, 12 Stat. at Large, 589.)

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel of information of E. Delafield Smith, attorney of the United States for the southern district of New York, who prosecutes for the said United States, in the behalf of the United States, and of the informer, hereinafter mentioned, and being here in court, in his own proper person, in the name and on the behalf of the said United States, and on the behalf of the said informer, against the estate and property, money, stocks, credits, and effects, to wit:

Against $15,000 (fifteen thousand dollars), more or less, belonging to

the Bank of Georgetown, a corporation doing business at Georgetown, in the State of South Carolina, which said $15,000 is now in cash, and is now on deposit in the Phenix Bank, a corporation doing business in the city of New York.

All of which are owned by, and belonging to, and are of the property, estate, and effects of the said corporation, the said Bank of Georgetown, a corporation composed and organized wholly of rebels, citizens and inhabitants of the United States, who, being the owners of such property, have knowingly used and employed, and have consented to the use and employment of the same in aiding, abetting, and promoting the existing insurrection against the Government of the United States;

173 and who, owning property in a loyal State, have assisted and given aid and comfort to the present rebellion against the authority of the United States, in a case of confiscation, alleges as follows, that is to say:

First. That Robert Murray, esquire, the marshal of the United States for the southern district of New York, heretofore, to wit, on the fifth day of January, one thousand eight hundred and sixty-five, by and under the authority of the President of the United States, and in obedience to the instructions of the Attorney-General of the United States, and to the directions of the district attorney of the United States for the southern district of New York, and in pursuance of the act of Congress entitled "An act to confiscate property used for insurrectionary purposes," approved August the sixth, one thousand eight hundred and sixty-one, and of the act of Congress entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved July the seventeenth, one thousand eight hundred and sixty-two, on land in the city of New York in the southern district of New York, seized the estate and property, money, stocks, credits, and effects aforesaid, to the end that the same might be confiscated, forfeited, and condemned, as required and provided in the said acts of the Congress of the United States.

Second. That during the present insurrection against the Government of the United States, the President of the United States, in and by a proclamation issued at the city of Washington on the fifteenth day of April, in the year of our Lord one thousand eight hundred and sixty-one, to which was affixed his signature and the seal of the United States, attested by the signature of the Secretary of State of the United States, did declare that the laws of the United States have been for some time past, and now are, opposed, and the execution thereof obstructed, in

174 the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law. That afterward, and during the said insurrection, the President of the United States, in and by a proclamation issued at the city of Washington on the sixteenth day of August, in the same year, signed, sealed, and attested as aforesaid, did declare that such insurrection against the laws, Constitution, and Government of the United States, which had broken out as aforesaid, in the States aforesaid, has since broken out, and yet exists, within the States of Virginia, North Carolina, Tennessee, and Arkansas.

That during the said present insurrection, and after the President of the United States had so declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of

judicial proceedings, or by the power vested in the marshals by law, at various times, from and after the sixth day of August, one thousand eight hundred and sixty-one, to the date hereof, at the city of New York, in the southern district of New York, and in the so-called Confederate States, to wit, in the State of South Carolina, the said Bank of Georgetown, of Georgetown, South Carolina, and other persons to the said attorney as yet unknown, and his and their agents, attorneys, and employees, did purchase and acquire the said property, and the same was sold and given to him and them, by a person or persons as yet unknown to said attorney, with intent to him and them to use and employ the same, and to suffer the same to be used and employed in aiding, abetting, and promoting such insurrection and resistance to the laws, and in aiding and abetting the persons engaged therein; and the said Bank of Georgetown, &c., and other persons, to the said attorney as yet unknown, and his and their agents, attorneys, and employees, being the owner and owners of the property, estate, and effects aforesaid, did knowingly use and employ, and did
175 knowingly consent to the use and employment of the same, in aiding, abetting, and promoting such insurrection and the aforesaid resistance to the laws, and in aiding and abetting the persons engaged therein, contrary to the provisions of the act of the Congress of the United States entitled "An act to confiscate property used for insurrectionary purposes," approved August the sixth, one thousand eight hundred and sixty-one.

Wherefore, in pursuance of the said act of Congress, the said property, estate, and effects became and were lawful subject of prize and capture wherever found, and became and were subject to be seized, and became and were and are subject to be confiscated and condemned.

That this honorable court has jurisdiction of the same, the said seizure having been made, and proceedings against the same having been first instituted in this district.

That on the 18th day of November, one thousand eight hundred and sixty-three, Charles F. Allen, esq., residing in this district, to wit, in the city of New York, filed with the said attorney an information of and concerning the property and the facts above described and set forth, in pursuance of the third section of the act of the Congress last above mentioned; wherefore these proceeding are for the use of such informer and the United States in equal parts, as provided in the said third section of the said act.

Third. That the said property, estate and effects so seized as aforesaid, are and were, at the time of such seizure, of the estate and property, money, stocks, credits, and effects of the said Bank of Georgetown, belonging to, and owned by, said corporation.

1st. The said Bank of Georgetown has acted as fiscal agent for, and that at various times since the seventeenth day of July, in the year last aforesaid, under the government of the so-called Confederate
176 States of America, and for and under the State of South Carolina, and for and under other of the several States of the said Confederacy, and under the laws thereof;

That the said Bank of Georgetown accepted appointment to the said agencies since the pretended ordinance of secession of the State, under the laws or ordinances of which the same were pretended to be bestowed.

2d. That at various times since the seventeenth day of July, in the year last aforesaid, the said Bank of Georgetown, while owning the said property, and other property in the State of New York, and in other

loyal States, has assisted, and has given aid and comfort, to the said rebellion, by assisting in arming, equipping, supporting and maintaining recruits by the gift, loan, advance, payment and transfer of money and other valuable things to the rebel organization, and to the so-called Confederate Government, and to their civil, military and naval officers, soldiers, servants, agents, emissaries and employees, and by other acts, whereby said corporation has knowingly aided, comforted and encouraged the existing rebellion and insurrection, and the persons employed therein, to the great injury and prejudice of the country, in its present contest to maintain, preserve and perpetuate its constitutional existence.

Fourth. That in and by proclamation issued and dated at the city of Washington, the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and sixty-two, signed by his hand, sealed by the seal of the United States, and attested by the signature of the Secretary of State, the President of the United States, in pursuance of the sixth section of the act of Congress entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved July the seventeenth, in the year last aforesaid, did proclaim to, and warn, all persons within the contemplation of the said sixth section of the act last mentioned
177 to cease participating in aiding, countenancing or abetting the existing rebellion, or any rebellion against the Government of the United States, and to return to their proper allegiance to the United States on pain of the forfeitures and seizures in and by said sixth section of the said act provided. That the said Bank of Georgetown, within the State of South Carolina, after the passage of the act last mentioned, and being engaged in aiding and abetting armed rebellion against the Government of the United States, did not, within sixty days after the said public warning and proclamation duly given and made by the President of the United States as aforesaid, and would not, cease to aid and abet such rebellion; wherefore, by virtue of the said sixth section of the act last aforesaid, all the estate and property, moneys, stocks, and credits, including the property, estate, and effects aforesaid, became and were liable to seizure, and became and were and are subject to forfeiture, confiscation and condemnation.

Fifth. That the said property, estate and effects were found and seized in this district as aforesaid, and are now within the said district, and the same are within the jurisdiction of this court. That, as appears from the facts hereinabove set forth, the said property, estate, and effects, at the time of the said seizure, belonging to a corporation engaged in rebellion, and who has given aid and comfort thereto, and who has used and employed, and consented to the use and employment, of the same, in aiding, abetting, and promoting the said insurrection against the Government of the United States, and the said resistance to the laws thereof, as aforesaid, and the said property, estate and effects, are declared by law to be subject of lawful prize and capture, and of lawful seizure, and should be confiscated and condemned as enemies' property, as aforesaid, for the purposes and in pursuance of the provisions set forth in the acts of Congress as aforesaid.

178 Sixth. That all and singular the premises aforesaid were and are true and within the jurisdiction of the United States and of this honorable court.

Seventh. That by reason of the premises, and in virtue of the statutes aforesaid, approved respectively on the sixth day of August, one thousand eight hundred and sixty-one, and on the seventeenth day of July, one thousand eight hundred and sixty-two, and in pursuance of

the general power and authority vested in this honorable court by law, and the special authority therein vested by the laws above mentioned, the libellants allege that they are entitled to, and they pray the judgment of this court, ordering, sentencing, and decreeing that the said property, estate, and effects be condemned as confiscated and forfeited to the United States.

And they pray that the clerk of this court may be required to issue the usual writ of venditioni exponas, returnable as may be directed, in accordance with the usual proceedings in admiralty and revenue cases. That upon the return thereof the said clerk retain and pay the reasonable and proper fees and charges of officers of the court, to be allowed in pursuance of the eighth section of the act of July the seventeenth, one thousand eight hundred and sixty-two; and that the said clerk, after paying the said fees and charges, distribute the remaining proceeds and moneys received by him to the said informer and the United States in equal parts.

Wherefore the said attorney of the United States, on behalf of the United States, prays the usual process and monition of this honorable court, against the said property, estate, and effects above set forth, in this behalf to be made and issued, and that all persons interested in the said property, estate, and effects may be cited to answer the premises; that these proceedings may be conducted and allowed, conformably, as nearly as may be, to proceedings in admiralty and rev-
179 enue cases; and that all due proceedings being had herein, this honorable court may be pleased to adjudge the forfeiture, confiscation, condemnation of the property, estate, and effects aforesaid to be disposed of as the court shall decree, for the use of the said informer and the United States, in equal parts as aforesaid, in pursuance of the acts of Congress aforesaid, according to the form of the statutes of the United States in such cases made and provided, and to the rules and practice of this honorable court.

Dated New York, January 5th, 1864.

E. DELAFIELD SMITH,
United States District Attorney.

(Endorsed:) U. S. district court. The United States against certain money on deposit in the Phenix Bank of the city of New York, belonging to the Bank of Georgetown, S. Carolina. Libel of information, acts of August 6th, 1861, and of July 17th, 1862. E. Delafield Smith, United States district attorney. Filed Jan. 5th, 1865. Ent'd order for process, returnable Jan'y 24th.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the
[SEAL.] southern district of New York, greeting:

Whereas an information hath been filed in the district court of the United States for the southern district of New York, on the 5th day of January, in the year of our Lord one thousand eight hundred and sixty-five, by E. Delafield Smith, esquire, district attorney, on behalf of the United States of America and the informer therein mentioned, against ($15,000) fifteen thousand dollars, more or less, belonging to the Bank of Georgetown, a corporation doing business at Georgetown, in the State of South Carolina, which said $15,000 is now in cash, and
180 is now on deposit in Phenix Bank, a corporation doing business in the city of New York:

For the reasons and causes in the said information mentioned, and

praying the usual process and monition of the said court, in that behalf to be made, and that all persons interested in the said fifteen thousand dollars, more or less, may be cited in general and special, to answer the premises, and all proceedings being had, that the said fifteen thousand dollars, more or less, may, for the causes in the said information mentioned, be condemned as forfeited to the use of the United States and the said informer:

You are therefore hereby commanded to attach the said fifteen thousand dollars, more or less, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say, why the same should not be condemned and sold pursuant to the prayer of the said information, that they be and appear before the said court, to be held in and for the southern district of New York, on the 24th day of January, 1865, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction; otherwise on the next day of jurisdiction thereafter; then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 5th day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of our Independence the eighty-ninth.

E. DELAFIELD SMITH,
U. S. District Attorney.

GEO. F. BETTS, *Clerk.*

(Endorsed:) Vol. 18, page 527. Southern district of New
181 York, United States district court. The United States vs. Certain money on deposit in Phenix Bank, N. Y. City, belonging to the Bank of Georgetown, S. C. Monition ret'ble Jan. 24, 1865. E. Delafield Smith, U. S. attorney. Filed 24th day of Jan'y, 1865. I hereby depute Wm. H. Thompson to execute the within. R. Murray, U. S. M.

In obedience to the within monition I attached $13,000, more or less, deposited in Phenix Bank, belonging to the Bank of Georgetown, S. C., therein described, on the 5th day of January, 1865, and have given due notice to all persons claiming the same that this court will, on the 24th day of January inst. (if that day shall be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated January 24th, 1865.
Plea made.
Default and condemnation.

182 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, in the said district, on the 24th day of January, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
CERTAIN MONEY ON DEPOSIT IN THE PHENIX Bank of the City of New York belonging to the Bank of Georgetown, of Georgetown, South Carolina.

The monition in this cause having been heretofore returned, and the usual proclamation having been made, and the default of all persons being duly entered, it is thereupon, on motion of E. Delafield Smith, esquire, attorney for the United States, ordered, sentenced, and decreed by the court, now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree that twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars belonging to the Bank of Georgetown, of Georgetown, in the State of South Carolina, and now on deposit in the Phenix Bank, in the city of New York, which said twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars has been heretofore seized by the marshal in this proceeding, &c., be and the same is hereby condemned as forfeited to the United
183 States; and it is further ordered, adjudged, and decreed, that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 14th day of February, 1865, and upon the return thereof the marshal pay into the registry of this court the sum of twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, there to abide the further order of this court.

SAML. R. BETTS.

(Endorsed:) United States district court. The United States vs. Certain money on deposit in the Phenix Bank, of the city of New York, belonging to the Bank of Georgetown, of Georgetown, South Carolina. Decree of cond'n and sale. E. Delafield Smith, U. S. dist. att'y. Filed January 24th, 1865.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the
[SEAL.] southern district of New York, greeting:

Whereas an information was filed in the district court of the United States for the southern district of New York, on the 5th day of January, in the year of our Lord one thousand eight hundred and sixty-five, by E. Delafield Smith, district attorney, on behalf of the United States, against certain moneys, to wit, $15,000, more or less, on deposit in the Phenix Bank of the City of New York, belonging to the Bank of Georgetown, of Georgetown, South Carolina, and praying that the same may be condemned as forfeited to the use of the United States.

And whereas the said money, to wit, twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars has been attached by the process issued out of the said district court, in pursuance of the said information,
184 and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the interlocutory sentence and decree of the said court in this cause made and pronounced on the 24th day of January, one thousand eight hundred and sixty-five, the said twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars is ordered to be sold by you, the said marshal, after giving fifteen days' notice of such sale, according to law, and that you have the moneys arising from such sale, together with this writ, at a district court of the United States, to be held for the southern district of New York, at the city of

New York, on the 14th day of February, one thousand eight hundred and sixty-five, and that you then pay the same to the clerk of the court. Therefore you, the said marshal, are hereby commanded to cause the said twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, so condemned and ordered to be sold, to be sold in manner and form upon the notice, and at the time and place by law required, and that you have and pay the moneys arising from such sale, pursuant to the aforesaid order or decree; and have you also then and there this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 24th day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of our Independence the eighty-fifth.

GEO. F. BETTS, *Clerk.*

In obedience to the above precept I have collected from the Phenix Bank the sum of twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, which sum I have paid to the clerk of this court, as I am above commanded.

Dated this 26th day of January, 1865.

R. MURRAY,
U. S. Marshal.

185 (Endorsed:) Vol. 18, No. 527, United States district court for the southern district of New York. The United States vs. Certain moneys in the Phenix Bank, &c., belonging to the Bank of Georgetown, of Georgetown, S. C. Venditioni exponas, returnable the fourteenth day of February, 1865. U. S. district attorney. Filed the 26th day of January, 1865.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court room, in the city of New York, on Friday, the 27th day of January, in the year of our Lord one thousand eight hundred and sixty-five.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
CERTAIN MONEYS ON DEPOSIT IN THE PHENIX Bank in the city of New York, belonging to the Bank of Georgetown, of Georgetown, South Carolina. } 18—527.

Whereas, in accordance with the decree of condemnation and sale, heretofore granted, in the above entitled suit:

A writ of venditioni exponas was duly issued to the United States marshal by the clerk of this court.

186 And it further appearing that the marshal has returned said writ of venditioni exponas, and has paid the proceeds thereof into the registry of the court, it is now further ordered and decreed that the clerk of the court retain and pay the proper fees and charges of the officers of the court, as the same may be allowed by this court.

And that the said clerk, after paying said fees and charges, distribute the remaining proceeds to the United States and the informer mentioned in the libel of information in this case in equal parts.

SAMUEL R. BETTS.

(Endorsed:) Vol. 18, No. 527. United States district court for the southern district of New York. The United States vs. Certain moneys in the Phenix Bank of the City of New York, belonging to the Bank of

Georgetown, of Georgetown, South Carolina. Final decree of distribution. Filed 27th day of January, 1865.

187 District court of the United States for the southern district of New York.

Confiscation.

THE UNITED STATES
vs.
CERTAIN MONEYS ON DEPOSIT IN THE PHENIX Bank of the city of New York. } Clerk's costs. 18—527.

1865.

Jan.	5th.	Filing information, 10c.; entered order for process and copy, 25c	$0 35
		Issuing process, $1.00; seal, 20c	1 20
		Draft report to the Solicitor Treasury, fol. 1, and copy, and entered, 40c.; filing 10c	50
		Draft and two copies certificate of substance of information from files, for publication by the U. S. marshal, for 10 @ 35c	3 50
		Order to return monition and copy, 25c.; filing monition and return, 20c.; entering return, 15c	60
		Order for proclamation and copy, 25c.; order for defaults and copy, 25c	50
		Order for condemnation, 15c.; sale, 15c.; copies at 10c	50
		Drawing decree, con. and sale, and entering fol. 5@ 15c.; copy, @ 10c.; filing, 10c	1 35
188		Drawing decree, con. and sale, distribution, fol. 3@ 15c.; copy and filing	85
		Order for venditioni exponas, 15c.; copy, 10c	25
		Issuing venditioni exponas, $1.00; seal, 20c	1 20
		Drawing final record, with pleadings, &c., fol. 65, @ 15c	9 75
		Drawing copy final record, with pleadings, &c., fol. 65, @ 10c.; filing, 10	6 60
		Order to return venditioni exponas, 15c.; copy, 10c.	25
		Filing venditioni exponas, 10c.; filing return, 10c.; entering return, 15c	35
		Drawing and copy report to solicitor, fol. 2, @ 25c.; filing, 10c	60
		Clerk's fee for keeping, receiving and paying out amount, $12,117.38, at 1 per cent	121 17
		Drawing abstract, 15c. per fol. 5; copy, at 10c.; filing, 10c	1 35
		Order for distribution and copy, 25c	25
		Taxing district attorney's cost, $1.00; filing, 10c	1 10
		Taxing marshal's cost, $1.00; filing, 10c.; filing 1 voucher, @ 10c	1 20
		Clerk's fee, on entering order, check, recording, &c., to pay marshal's costs, $1.60	1 60
Jan.	5th.	Clerk's fee, on entering order, check, recording, &c., to pay district attorney and clerk	1 60
		Clerk's fee, on entering order, check, recording, &c., to pay aff't, fees, net and proceeds	1 60

189	Information	1 60
	Drawing and copy receipts for amounts paid, fol. 6, @ 25c	1 50
	Filing same at 10c. each, 4 @ 10c	40
	Copy of abstracts and receipts from files for solicitor, auditor, and informer, fol. @ 10c	1 80
	Drawing certificates, 15c.; copies, @ 10c. to each	75
	Entries in ledger, 15c.; copy costs from files, fol. 6, @ 10c	75
	Filing clerk's costs	10
	Drawing and copy report to solicitor of suit decided, fol. 1, 25c.; entering 15c.; filing, 10c	50
	Making docket and indexes, $1.00	1 00
	Duplicate copies from the files of monition, substance libel, decrees, venditioni exponas, abstracts, solicitor and informer, fol. 90, @ 10c	9 00
	Certifying each, @ 25c.; seals, @ 20c	90
		$176 52

Taxed at one hundred and seventy-six $\frac{52}{100}$ dollars, February 4th, 1865.
SAMUEL R. BETTS.

(Endorsed:) Vol. 18, No. 527. United States district court. The United States vs. Certain moneys on deposit in the Phenix Bank of the city of New York. E. Delafield Smith, U. S. district attorney. Clerk's costs on seizure. Filed January , 1865. Due service on notice of taxation of the within is hereby admitted, Feb. 3, '65. E. Delafield Smith, U. S. district atty.

190 *Confiscation.*

U. S. District court for the southern district of New York.

THE UNITED STATES
vs.
CERTAIN MONEYS IN THE PHENIX BANK belonging to the Bank of Georgetown, S. C.

E. Delafield Smith, U. S. district attorney.

18		Marshal's costs.	Disbursements.	Remarks.
	Service of attachment	$2 00		
	Advertising		$10 00	Proceeds.
	Proclamation	30		$12,117 38
	Marshal's expense of custody			
	Commission on $ at 1 per cent			
	Commission on $ at ½ per cent			
	Serving venditioni exponas	2 00		
	Advertising sale			
	Printer, for advertising			
	Commissions on, viz:			
	On $500, at 2½ per cent	12 50		
	On $11,617.38, at 1½ per cent	145 21		
	Storage			
	Insurance			
	Commission on $10 disbursement	20		
	Order to discharge and copy, 2 folios	20		
	Amount of disbursements	10 00		
	Draft and copy of costs, 4 fols., at 10 cts	40		
	Copy of costs to file, 2 fols. at 10 cts	20		
	Taxed at one hundred and seventy-three $\frac{1}{100}$ dollars, January 26th, 1865	173 01		

GEO. F. BETTS,
Clerk.

191 (Endorsed:) Vol. 18, page 527. United States district court for the southern district of New York. The United States vs. Certain money in the Phenix Bank belonging to the Bank of Georgetown, S. C. Copy of U. S. marshal's costs. Filed January 26th, 1865.

U. S. district court.

THE UNITED STATES
vs.
CERTAIN MONEYS IN THE PHENIX BANK OF the city of New York, belonging to the Bank of Georgetown, of Georgetown, South Carolina.

Bill of the United States district attorney for fees and charges under § , act of July 17, 1862.

Proceeds	$12,117 38
Proctor's costs:	
Costs of final decree of condemnation	20 00
Counsel fees:	
Counsel fee on receiving and filing formal information; obtaining the actual and requisite information of the facts "necessary to warrant the condemnation," and to establish "probable cause for the seizure," determining the propriety and mode of proceeding upon the "discretion, judgment and responsibility" confided to the district attorney by the Attorney-General," arranging the details of the prosecution, (see No. 4 of attorney-general's instructions)	50 00
Counsel fee for taking and pursuing the entire proceedings to judgment of condemnation, preparing such "order and form of decree and sale" as are provided for in section 8 of the act of July 17, 1862, and other services to consummate the proceeding and "fitly and efficiently effect the purposes of the act and vest in the purchasers of the property good and valid titles thereto" (see the section above cited, and also No. 7 of Attorney-General's instructions)	30 00
	$100 00

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SOUTHERN DISTRICT OF NEW YORK, *ss:*

E. Delafield Smith, attorney of the United States for the southern district of New York, and an officer of this court, being duly sworn, says: That, as such district attorney, he has acted for and as proctor and counsel of the United States, the libellants in this cause. That as such proctor and counsel this deponent has actually rendered and performed the services enumerated in the foregoing bill, in accordance with instructions of the Attorney-General of the United States, a printed copy of which has been exhibited to the court.

That none of those services except those indicated in the proctor's costs of twenty dollars are provided for by the act in relation to costs, approved February 26th, 1853; and that, in this deponent's judgment, the foregoing "fees and charges" are "reasonable and proper in the

premises," and should be allowed under the 8th section of the act of July, 17, 1862.

E. DELAFIELD SMITH.

Sworn to before me this 28th day of January, 1865.

JOSEPH BELL,
Notary Public.

193 Upon the proofs above submitted, showing the performances of the services set forth in the foregoing account, and in pursuance of the 8th section of the act of July 17, 1862, and in accordance with the views of the Attorney-General, expressed in his printed instructions to district attorneys, dated January 8, 1863, the fees and charges above mentioned, amounting to one hundred dollars ($100), are allowed to the district attorney in this cause.

New York, February 3d, 1865.

SAM'L R. BETTS.

(Endorsed:) 18—527. U. S. district court. The United States vs. Certain Moneys in the Phenix Bank of the City of New York belonging to the Bank of Georgetown, of Georgetown, South Carolina. Costs of the U. S. district attorney, taxed at $100. E. Delafield Smith, U. S. dist. atty. Filed February 3, 1865.

United States district court, southern district of New York, of Jan'y term, 1865.

THE UNITED STATES OF AMERICA
vs.
CERTAIN MONEYS ON DEPOSIT IN THE PHENIX Bank of the City of New York belonging to the Bank of Georgetown, South Carolina. } 18–527.

194 The marshal returns upon the monition issued in this cause, that, in obedience to said precept, he had attached $13,000, more or less, deposited in Phenix Bank, belonging to the Bank of Georgetown, S. C., therein mentioned, and had given due notice to all persons claiming that this court would this day proceed to the trial and condemnation thereof, unless a claim should be interposed for the same.

THE SAME
vs.
THE SAME. } Of Jan'y term, 1865.

The marshal returns, upon the writ of venditioni exponas to him issued in this cause, that, in obedience to the said precept, he had collected from the Phenix Bank the sum of twelve thousand one hundred and seventeen $\frac{38}{100}$ dollars, which amount he has paid to the clerk of this court, as in the said writ he was commanded.

Gross proceeds collected from Phenix Bank		$12,117 38
Expenses:		
Marshal's taxed costs	$173 01	
District attorney's taxed costs	100 00	
Clerk's " "	176 52	
One-half net proceeds, Charles F. Allen, informer	5,833 92	
		$6,283 45
		$5,833 92

One-half of net proceeds paid by the clerk to the assistant treasurer, to be by him distributed according to law.

195 Suit brought under the following acts: Act August 6, 1861; act July 17, 1862.

President's proclamation, April 15, 1861.
" " July 25, 1862.

(Endorsed:) Vol. 18, p. 527. United States district court, southern district of New York. The United States vs. Certain money on deposit in the Phenix Bank, N. Y. City, belonging to the Bank of Georgetown, S. C. Final record, abstract, &c. E. Delafield Smith, U. S. district attorney. Filed Feb. 3, 1865.

All of which we have caused by these presents to be exemplified, and the seal of the said district court to be hereunto affixed.

Witness the honorable Samuel Blatchford, judge of the said court, in the city of New York, in the southern district of New York, this second day of February, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third.

[SEAL.] GEO. F. BETTS, *Clerk.*

I, Samuel Blatchford, judge of the said district court, do hereby certify that the foregoing exemplification is in due form of law.

SAMUEL BLATCHFORD.

196 In supreme court—first department. October general term, 1874.

Davis, P. J., Daniels and Lawrence, J. J.

DAVID RISLEY, RESP'T, *ag't*
THE PHENIX BANK OF THE CITY OF NEW YORK, APP'L'T.

Appeal from order of the special term, allowing an amendment to the complaint.

Flamen B. Candler, for appellant.
Beebe, Wilcox & Hobbs, for respondent.

DAVIS, P. J.: The amendment proposed consisted of allegations to be inserted in the complaint to the effect that when the check which was the subject of the action was presented to the bank, the defendant, by its cashier, admitted the possession of funds to meet the same, and promised to pay the check. It appears that evidence tending to prove the truth of these allegations had already been put in before the referee without objection, but on application to the referee to amend the pleadings by conforming them to the proof (as claimed by plaintiff), he held that he had no power to allow the amendment, on the ground that it would be substantially adding a new cause of action, and suggested that the application should be made to the court. There seems to us to be no doubt of the power of the court to allow the amendment,

197 and we are of opinion that the power was not in this case improvidentially exercised. Proper terms were imposed, and the condition of the order, that the witness who had already testified to the alleged facts should be produced for cross-examination, will operate to

prevent any unjust effect that might otherwise arise from the application of the testimony already into the new phase of the case. Where a proposed amendment is the addition of new matter relating to the subject matter of the action already set out in the complaint, and is not a separate and independent cause of action, new and distinct in its nature and particulars, the fact that the statute of limitations may have run pending the suit, and that the defendant will not be at liberty to plead that statute in bar, is not sufficient to prevent the court from allowing the amendment in the exercise of its sound discretion. We think the order should be affirmed with $10 costs of this appeal, besides disbursements.

I concur.

CHAS. DANIELS.
A. R. LAWRENCE.

198 FIRST DEPARTMENT.

Before N. Davis, P. J., Justices Brady and Daniels.

MARCH, 1877.

DAVID RISLEY
ag'st
THE PHENIX BANK.

Appeal from a judgment dismissing the complaint at the circuit.

E. H. Hobbs, J. E. Risley, for app'l't.
Edgar S. Van Winkle, for resp't.

BRADY, J.: The plaintiff held a check drawn by the Bank of Georgetown, South Carolina, upon the defendants, for the sum of ten thousand dollars. It was dated May 20, 1861, and was drawn to the order of the plaintiff, for a valuable consideration. On January 4, 1865, it was presented to the defendant for payment, and its cashier said, "the drawer's signature is correct; the check is good; we have the funds and will pay the amount, but you must be identified as the payee of the check." The plaintiff was properly identified, and the check again presented on the 5th January, 1865, and on subsequent days, but payment was refused. It does not distinctly appear that the identification took place on the 5th January, although it may be fairly inferred to have been then done, from the fact of presentation in connection with what took
199 place on the day preceding. The complaint, in addition to the cause of action resting upon the check, as a further and separate cause of action alleged that on the 20th day of May, 1861, the said defendant was indebted to the said Bank of Georgetown, in the sum of ten thousand dollars and upwards, and that on that day the said Bank of Georgetown sold and assigned to the plaintiff the said indebtedness of the defendant to it, to the amount of ten thousand dollars, and that the plaintiff has ever since been, and is now, the lawful holder and owner thereof, and brings this action to recover the same.

And on the trial the plaintiff offered to show in reference to it as follows: "That on the 20th day of May, 1861, for a valuable consideration, by an oral agreement, the Bank of Georgetown assigned and sold the indebtedness due it, the Bank of Georgetown, from the defendant, to the extent of ten thousand dollars thereof, and gave plaintiff the check above referred to; and that on the 4th day of January, 1865, the

plaintiff notified the defendant that he had purchased the claim and indebtedness due from the Phenix Bank, and presented the check and demanded payment of the same, and that the same has not been paid."

The counsel for the defendant conceded, for the purposes of a motion to dismiss the complaint, that the plaintiff's testimony would prove the facts stated prima facie, and that the offer to prove them should have the like effect as if the witnesses had been sworn and so testified. This concession was made, because after the case had been opened, and before any evidence was given, the defendant's counsel moved to dismiss the complaint, on the assumption that, admitting the facts stated to be truly existing, the plaintiff had no cause of action.

In reference to the defendant's liability upon the check, the proposition was that the check was a bill of exchange, and the drawer could not be held liable thereon, except by its acceptance in writing.

200 This view is sustained by the case of Duncan et al. vs. Berlin et al., 60 N. Y. Rep., 151; but there are many others in which the doctrine has been declared that a check is a bill of exchange. (See Cruger vs. Armstrong, 3 Johns., cases 5, 7, 8; Merchant's Bank vs. Spicer, 6 Wend., 443, 445; Murray vs. Judah, 6 Cowen, 484, 490; Lunt vs. Bank of North America, 49 Barb., 221; Chapman vs. White, 6 N. Y., 412.)

When the office of a check which is sui generis is considered, it is strange that it should be regarded as a bill of exchange, and subject to the rule which governs such instruments. A check is generally drawn upon a bank or bankers, and is in fact a substitute for ready money and means money. It is received with the expectation that it will be accepted and treated as money until dishonored by the drawee, which rarely happens. It is not dependant upon any other incident than the presence of the fund against which it is drawn, and it is not drawn therefore for acceptance but for payment. It does not depend upon the willingness or readiness of the drawee to accept, but wholly upon existence of the fund, and payment is the only acceptance which enters into the arrangement or intention of the parties in reference to it, both the maker and the holder, or the payee regarding it as a direction to the drawee to pay so much out of the money of the drawer, which the drawee holds for the sole purpose of paying it out to the creditors of the drawer, having no control over it in any way whatever. When, therefore, a check, considered with reference to the design and object of it, is presented to the bank, the only request it can make, through its officers, is proof of identity, when it is payable to the order of a person named.

This proceeding does not involve acceptance, however. The

201 identification is not required for that purpose. On the contrary, it is for protection, and because there is not to be an acceptance, but immediate payment.

The doctrine of acceptance which relates to bills of exchange eo nomine is well understood by the contracting parties, and they know it to be an element affecting their validity, which depends on a variety of independent casues. The rule stated relative to checks is, however, so well settled that the court of last resort only should interfere with it. The proposition of the defendant's counsel thus considered was correct, therefore, for those reasons, and the court was justified in accepting it as a correct exposition of the law. This result did not, however, dispose of the case, although it disposed of all issues, save one, to be considered.

The allegation in the complaint and the proof established an oral

assignment of the indebtedness of the defendant to the Bank of Georgetown to the extent of ten thousand dollars, for a valuable consideration, of which the defendant was notified, at a time when funds of the assignor to the amount named was in its possession, namely, on the 4th January, 1865.

This was not an equitable assignment springing out of the possession of the check, but an assignment in fact, valid in law, and giving or creating a good cause of action. The check would be evidence of the transaction as between the assignor and assignee, and might be admissible as corroborative testimony in this action if the issue on that subject were to be disposed of on conflicting proofs.

But this is a subject not necessarily presented now for discussion. The assignment averred was good as such. Such a legal effect may be accomplished by parol. A chose in action may be assigned in that mode. (Prescott vs. Hall, 17 Johns. Rep., 284; Ford vs. Stuart, 19 Johns. Rep., 342; Kessell vs. Abetis, 56 Barb. Rep., 362.)

202 The learned counsel for the defendant seems to have regarded the check as inseparably connected with the cause of action, and that the whole claim rested solely upon the drawing and delivery of the check. If this were so the judgment would have to remain undisturbed, but the assignment considered made a separate cause of action, and the plaintiff had a right, of which he was deprived, to present his proofs to establish it.

For these reasons we think the judgment must be reversed and a new trial ordered with costs to abide the event.

DAVIS, P. J., and DANIELS, J., concurred in the result.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry A. Gumbleton, clerk of the said city and county, and clerk of the supreme court of said State for said county, do hereby certify that I have compared the preceding copy of the notice of appeal, judgment-roll, and case with the original notice of appeal, judgment-roll, and case on file in my office, and that the same is a correct transcript therefrom and of the whole of such originals.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 9th day of July, 1878.

[SEAL.] HENRY A. GUMBLETON,
Clerk.

(Endorsed:) Filed July 9th, 1878.

203 At a general term of the supreme court, held at the court-house in the city and county of New York, on the 6th day of November, 1879.

Present: Hon. Noah Davis, presiding justice.
" Charles R. Ingalls, "
" John R. Brady, "

DAVID RISLEY, PLAINTIFF AND RESPONDENT,
vs.
THE PHENIX BANK OF THE CITY OF NEW YORK, defendant and appellant.

This cause coming before the court, upon the appeal taken by the defendant from the judgment entered in this action, on the 14th day of February, 1878, and the order denying the defendant's motion upon the

minutes for a new trial, made and entered on the 14th day of January, 1878:

Now, after hearing Mr. F. B. Candler, in behalf of the defendant and appellant, and Mr. Edward H. Hobbs and Mr. John E. Risley, in behalf of the plaintiff and respondent, and having duly considered the arguments submitted by the respective parties, it is now ordered that the said judgment and the said order be, and they hereby are, and each of them hereby is, in all things, affirmed, with costs to the respondent.

(A copy.)

(Signed) HUBERT O. THOMPSON,
Clerk.

204 Supreme court, city and county of New York.

DAVID RISLEY, PL'FF, RESPD'T,
vs.
THE PHENIX BANK OF THE CITY OF NEW York, def't, app'l't.

The appeal from the judgment entered in the above entitled action, on the 14th day of February, 1878, and the order made and entered on the 14th day of January, 1878, having been heard at general term of this court, and the same having been in all things affirmed, with costs, to be taxed; and the said costs having been adjusted at the sum of one hundred fifty-two and $\frac{90}{100}$ dollars, now, on motion of Beebe, Wilcox & Hobbs, attorneys for plaintiff and respondent,

It is adjudged that the said judgment and the said order be, and they hereby are, and each of them is, in all things, affirmed, and that plaintiff and respondent David Risley recover of the defendant and appellant his costs of appeal as taxed, amounting to the sum of one hundred fifty-two and $\frac{93}{100}$ dollars, and that he have execution therefor.

Dated November 20th, 1879.

HUBERT O. THOMPSON,
Clerk.

205 N. Y. supreme court, city and county of New York.

DAVID RISLEY, RESPONDENT,
against
THE PHENIX BANK OF THE CITY OF NEW York, appellant.

Please take notice that the defendant in this action hereby appeals to the court of appeals, from the general term order, made in said action, dated on the 6th day of November, 1879, which affirmed the order denying the motion for a new trial of said action, and also from the judgment entered in said action on the 20th day of November, 1879, which affirmed, with one hundred and fifty-two dollars and ninety cents costs to the plaintiff, the judgment entered in said action in favor of the plaintiff, and against the defendant, on the fourteenth day of February, 1878, for twenty thousand five hundred and eighty-three dollars and sixteeen cents, damages and costs.

Dated November 20th, 1879.

EDGAR S. VAN WINKLE,
Attorney for Defendant, Appellant, Office and Post-Office Address No. 48 Wall St., New York, N. Y.

To Messrs. BEEBE, WILCOX & HOBBS,
Attorneys for Plaintiff, Respondent.
" HUBERT O. THOMPSON, Esq.,
Clerk of the City and County of New York.

206 STATE OF NEW YORK,
City and County of New York, ss:

I, Hubert O. Thompson, clerk of the said city and county, and clerk of the supreme court of said State, for said county, do hereby certify that I have compared the preceding copy of the notice of appeal, judgment roll, and case, on file in my office, and that the same is a correct transcript therefrom, and of the whole of such originals.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 29th day of November, 1879.

[SEAL.] HUBERT O. THOMPSON,
Clerk.

J. H. R, 15.00.

N. Y. court of appeals.

DAVID RISLEY, RESPONDENT,
against
THE PHENIX BANK OF THE CITY OF NEW York, appellant.

CITY AND COUNTY OF NEW YORK, *ss:*

Samuel Hoff, being duly sworn, says: That he is a clerk in the office of the attorney for the defendant-appellant in the above-entitled action; that the reasons of the court below, viz, the general term of the supreme court for its judgment of affirmance from which the appeal has been taken to this court, cannot be procured, as no opinion was given.

SAMUEL HOFF.

Sworn to before me this 29th day of November, 1879.
WILLIAM E. RUDISCHHAUSER,
Comm'r of Deeds, N. Y. City and County.

(Indorsed:) N. Y. court of appeals. David Risley, plaintiff-respondent, against The Phenix Bank of the City of New York, defendant-appellant. Return. Edgar S. Van Winkle, att'y for def't-appellant, 48 Wall street, New York. $\frac{4}{319}$. Filed Dec'r 8th, 1879.

(Indorsement on cover:) No. 1160. The Phenix Bank of the City of New York, plaintiff in error, vs. David Risley. New York court of appeals. Filed 11th March, 1881.